

AN INTRODUCTION TO THE
PAPERS OF THE NEW YORK
PRIZE COURT, 1861-1865

BY

MADELINE RUSSELL ROBINTON, M.A.

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
COLUMBIA UNIVERSITY

NEW YORK

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To

A. I. F. R.

and

M. G. C.

PREFACE

THIS work was undertaken to provide an introduction to the papers of the prize court at New York during the Civil War, which the Library of Columbia University has reproduced on microfilm.

My thanks are due to my husband, Hermann F. Robinton, now Supervisor of Public Records of the State of New York, who as Director of the Survey of Federal Archives in New York City drew my attention to these papers. I am very grateful to Judge John Clark Knox of the Federal District Court, Southern District of New York, who readily authorized their use for this purpose, and to the clerks of the court, Mr. Jack Edwards and Mr. George J. H. Follmer, who generously and courteously facilitated the examination and arrangement of the papers. My appreciation is due also for the courtesies extended me by the staff of the Montague branch of the Brooklyn Public Library and of the Office of Naval Records and Library of the Department of the Navy, Washington, D. C.

I should like to record my thanks to Miss Lillie Berk for her help in preparing the manuscript for the printer, to Professor Jesse D. Clarkson for his invaluable criticism and encouragement, as well as his help in the unpleasant task of reading proof, and to Professor John A. Krout for his consideration in reading the manuscript and his many helpful suggestions. Finally and in particular to Professor Robert L. Schuyler under whose painstaking supervision this work was done, my sincere thanks for his advice of inestimable value; this acknowledges, however, but a small part of the debt I owe to Professor Schuyler, whose inspiration, encouragement, and friendship have remained of the most lasting significance from my days at Columbia.

It is perhaps unnecessary to add that surviving errors are my own.

M. R. R.

BROOKLYN COLLEGE
BROOKLYN, N. Y.

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CHAPTER I

THE CHARACTER OF THE PAPERS

IN 1936 the Survey of Federal Archives was established to prepare an inventory of federal records located outside of Washington, D. C. As part of the survey of the records of federal agencies in New York City,¹ the records in the new United States Court House at Foley Square were inventoried. My attention was called to the papers in the prize cases adjudicated in the District Court for the Southern District of New York during the Civil War. A casual inspection led to determination to investigate their resources further.

These papers were the files of cases of ships seized for attempted violation of the blockade during the Civil War and sent by their captors to New York for condemnation by the prize court there. Realization that this vast amount of material had remained undisturbed (except for removal in the course of successive migrations of the courts to new Court Houses in 1875 and 1935, or from one record room or storage area to another) and untouched by historians made it important to see what type of material might be buried in the files.

A random sample was selected, the case of the British steamer *Memphis*. Captured in July, 1862, after running out of Charleston with a large cargo of cotton and turpentine, the *Memphis* was condemned by the New York prize court, vessel and cargo netting the sum of \$510,914.07. The papers in the folder all pertained to the case but were in considerable disorder. Apparently, the papers were originally filed in chronological order, for they bear the endorsement of the date of the filing. This order must have been disturbed in the many removals of the records that had occurred in the past. Reordering and abstracting of the papers of this case revealed the type of materials one

¹ *Second Annual Report of the Archivist of the United States*, 1935-36, pp. 88-103; Richard B. Morris, "The Federal Archives of New York City," *American Historical Review*, XLII (1937), No. 2, p. 259.

could expect to find and made evident the value they might have for the historian.

The Library of Columbia University undertook to microfilm the records. Judge John Clark Knox of the District Court, Southern District of New York, expressed an interest in the project and gave his approval to the microfilming of the prize court records. The clerks of the court gave their full cooperation, assigning space for the setting up of the apparatus, and were most helpful in facilitating access to the records room.

Before the papers could be microfilmed, they had to be arranged in a workable order. The shelves of old ledger books were searched for any that might be connected with the prize court. The collections of ships' logs were gone through to find the logs of the prize ships. In the course of careful search of the various files in the records room, there were found in a file drawer some apparently miscellaneous papers that turned out to be the prize commissioners' correspondence, also some of their private records and memoranda. The clerks of the court were primarily interested in the current records of the court. Records of cases that had been closed and were no longer consulted were, of course, kept, but as space was needed for the increasing accumulation of records, older records were retired to less accessible storerooms. In the moving of records, and these records had only recently been removed from the attic of the old Post Office Building, there had always been the danger of misplacement.

In arranging the papers for microfilming, it was decided to follow the order of the *Prize Commissioners' Register*,² cross referencing the prize cases with the volumes of the *Admiralty Docket*,³ and numbering them consecutively. The numerals in parentheses in the text following the names of vessels or cases refer to this numeration. The papers of each case were then

² *Prize Commissioners' Register*, 2 volumes labelled A and B, in manuscript, cited as *P. C. R.*, hereafter.

³ *Admiralty Docket* volumes include both cases in prize and in instance. Cited as *Adm. Doc.*, hereafter.

assembled and sorted, and since it appeared that no order of arrangement survived, the papers were rearranged according to the principle of provenance, an attempted reconstruction of the original order based on the procedure of the prize court.

This inevitably led to a study of the procedure of the prize court, the results of which are incorporated in Chapter III. In working out this problem it was soon evident that very few of the people connected with the prize court in Civil War days had had any actual experience with prize cases before the reconstitution of the New York prize court in May, 1861, to take care of the cases resulting from the opening of the Civil War and from the blockade in particular. This raised the question of the sources available to them in 1861 for the study of prize court procedure. The authorities or guides that could have been and were used for this purpose are discussed in Chapter II.

To round out the picture it seemed desirable to check these prize court papers against the printed reports on prize cases of the Secretary of the Navy ⁴ and against the *Official Records of the Union and Confederate Navies in the War of the Rebellion* ⁵ to see if there was any real overlapping of the material. This was discovered not to be the case. The manuscripts on prize matters during the Civil War in the Navy Department Archives in Washington were also consulted, and the material there was found to be supplemental to the New York papers. The correspondence between the New York court officials and the Navy Department was found most helpful in understanding the background of the investigation of the New York prize court treated in Chapter IV.

⁴ Letters of the Secretary of the Navy in reference to prize matters. Executive document, No. 73, House of Representatives, 37th Cong., 2nd Sess.; Executive document, No. 279, House of Representatives, 40th Cong., 2nd Sess.; *Compilation of Laws and Decisions of the Courts relating to War Claims*, (Washington, 1912), pp. 195-235.

⁵ *Official Records of the Union and Confederate Navies in the War of the Rebellion* (30 vols., Washington, 1894-1922, and index, 1927). Cited as *O. R. N.*, hereafter.

What are these prize court papers and what do they reveal? They are of two principal types: those found on the ships, and those that reflect the process of the case through the court. For the general historian the former hold by far the greater measure of interest.

First of all, there are the ship's papers proper. These are standardized, varying only slightly from one country to another.⁶ Their importance as means of identification and as furnishing proof that the vessel was on a legitimate voyage are so great that the absence of certain essential papers was ground for suspicion and sometimes was in itself sufficient basis for hailing the vessel before a prize court.⁷

Every seagoing ship must carry its register; small coasters carried in place of a register their enrollment and license to engage in coastal trade. The register or enrollment indicates the place and date of registry of the ship and therefore its nationality, its owner or owners, with the number of shares held by each, as well as the nationality, or at least the place of residence, of the owners; in British registers the occupation of the owners is also stated. The British form, however, contained a warning that the register was not a certificate of title, did not necessarily contain notice of change of ownership, and in no case contained official record of any mortgages affecting the ship. Here are to be found also the ship's vital statistics: place and date of construction; burthen; length, breadth, and depth; rigging and class; type of stern, galley, etc. In some cases ships carried provisional British registers, issued by a British consular officer in an American, usually a Confederate,

⁶ Godfrey Lushington, *A Manual of Naval Prize Law* (London, 1866), pp. 29-34.

⁷ "All the papers should be produced. If any are kept back, it furnishes just ground of suspicion, and authorizes detention." Francis H. Upton, *The Law of Nations Affecting Commerce During War* (New York, 1863), p. 339; Samuel Blatchford, *Reports of the Cases in Prize Argued and Determined in the Circuit and District Courts of the United States for the Southern District of New York, 1861-1865* (New York, 1866), *The Springbok*, p. 457.

port, indicating, of course, that the vessel had recently been sold and had not yet touched at a British port where a British registrar was available.⁸ In the early days of the war Confederate registers were the ante-bellum forms of the United States, with the word "United" inked out and the word "Confederate" written in; soon, however, Confederate registers, enrollments, and licenses were issued on their own printed forms.

Corresponding information about the men who sailed these ships is found in the ship's articles and crew lists. The master's name is, of course, inscribed or endorsed on the ship's register, but naturally does not appear in the shipping articles in the list of the crew. The shipping articles are, in effect, the contract between the ship, personified by its master, and the individual members of the crew. The latter's signatures, or more frequently crosses next to their names, indicate that they had bound themselves for the voyage under the stated conditions of the articles. The shipping articles are on standard printed forms. The British form was established by the Merchant Shipping Act of 1854, and is usually to be found in the version sanctioned by the Board of Trade in August, 1860.⁹

The American form was established by a series of Acts of Congress for the government of seamen, merchants, etc., in 1790, 1803, 1835, and 1840, as usually printed on the back of the form; Confederate vessels used the same form, with substitution by hand of "Confederate" for "United." Two types of information are obtainable from this form. On the one hand, it states the conditions under which the crew agreed to sail. In addition to the destination, ports of call, terminal point, and expected duration of the voyage, it states the wages or shares promised to each member of the crew, the fines to be imposed on seamen for infringement of regulations, the standardized scale of provisions, and the ration of grog; American shipping articles emphasize "No grog allowed." On the other hand, the

⁸ Lushington, *op. cit.*, p. 31.

⁹ The Bahaman form was much simpler than the form used in the ports of the United Kingdom.

shipping articles contain much biographical information about the members of the ship's company. Here appear the man's age, the town and country of his birth, the name, official number and home port of the ship on which he last sailed, and the date and place of his discharge from her. They supply also the date and place he joined the ship, the capacity in which he shipped, and the amount of any wages advanced to him. This document is attested by the signature of the shipping master.

Similar information is contained in the crew lists, carried by vessels engaged in foreign trade. These add also information as to place of residence and citizenship. The American form adds vague characterizations of height, complexion, and color of hair. Detailed as is the information, not too much reliance can be placed on its factual accuracy. Thus, almost every ship carried a John Johnson, who in one case appears as "John Johnson alias Isaac Capluan."¹⁰ In some respects, however, shipping articles and crew lists seem to have been scrupulously kept. Changes in personnel, whether by reason of sickness, death, or desertion, are carefully recorded, and the necessary replacements in foreign ports are sworn to before the resident consul of the country whose flag the vessel flew.

Other ship's papers supply further details of the voyage. Vessels engaged in foreign trade required clearance papers. These, signed and dated by the customs or port authorities, were in the nature of certificates attesting to the fact that the ship, identified by name, class, tonnage, master's name, and port of destination, had complied with the rules and regulations of the port, had paid the proper fees and duties, and was therefore legally free to depart on her voyage. Ships were expected to carry clearance papers not only from the port where the voyage had begun, but from all ports where they had loaded or unloaded cargo. Along with customs clearance went bills of health signed and dated by the health officers of the port. Often, also, there are receipts for lighthouse and tonnage dues. The importance of the clearance papers is underlined by the cir-

¹⁰ See crew list filed among ship's papers of bark *Pioneer* (5).

cumstance that British vessels leaving Confederate ports where no customs office was functioning took the precaution of securing from the British consul or vice-consul an affidavit to that effect.¹¹

Detailed information on the voyage is furnished by the log book or log books.¹² All ships engaged in foreign trade were required to keep logs, and their absence roused immediate suspicion;¹³ naturally, not all Confederate blockade runners carried them, nor did many British vessels registered in Nassau or Bermuda. The log is the diary or journal of the ship, though a more objectively kept chronicle than most diaries. It constitutes a day by day account of what happened on the ship and of what happened to the ship. Beginning with a careful timetable—weighing of the anchor, getting under way, and leaving harbor—it continues with a daily description of the condition of the weather, the position of the ship, the course, and usually the distance traversed. It lists also all repairs made, ships bespoken, and land or lights sighted. Nor do the details of making port, employment of a pilot or tow, and dropping of anchor conclude the record. Days in port are somewhat cursorily re-

11 See for example exhibit E filed with ship's papers of schooner *Aigburth* (26), also exhibit G filed with ship's papers of schooner *Edward Barnard* (41).

12 British ships often carried two logs, the ship's log and the official log. The latter recorded all incidents affecting the crew, such as illness, or desertion, the boarding by blockaders, etc. However, it was at the discretion of the master or owner of the ship whether the official log was to be "kept distinct from the ordinary ship's log or united therewith provided all the blanks in the official log are used."—Printed on the form of the official log.

13 "The absence of a log-book, unaccounted for, is a matter of distrust, in time of war, as to the integrity of purpose in the outfit and operations of a trading vessel captured under equivocal and disparaging circumstances; as it is a document so usual and important, as evidence of the transactions of a ship navigating abroad, and one which so universally accompanies trading vessels employed in foreign commerce. (Dana's Seaman's Friend, 145, 198.) Its absence gives room for presumption that material matters have been fraudulently suppressed..." The *Joseph H. Toone*, Blatchford, *Prize Cases*, p. 229.

corded, but lading or unlading, as well as repairs, are noted. Occasionally the log strikes a livelier note, as in the entry recording that a member of the crew "made an unprovoked attack upon the mate tearing the shirt off his back but in the end came out second best and cried for quarter."¹⁴ Many of the logbooks in the files of the New York court¹⁵ tell the story of previous voyages as well as of the one on which the vessel was engaged at the time of her capture. Sometimes the log was continued after the capture by the prize master up to the time anchor was dropped in New York harbor.

Just as the register supplies the details about the ship, the shipping articles about the crew, and the logbook about the voyage, so do manifests and bills of lading supply the facts about the cargo. All ships carrying cargo, whether engaged in foreign or coastal trade, must carry these documents. For each consignment of freight a separate bill of lading is made out, on a standard printed form, with the name of the shipper filled in, printed or written, and signed and dated by the ship's captain. The bill of lading fulfills a dual function. On the one hand, it constitutes a receipt for the goods, in which the captain acknowledges he has received in good condition from a certain shipper the specified number of units, whether cases, bales, barrels, tierces, or what not, of a specified commodity, identified by a mark placed on the cargo as well as on the bill of lading. At the same time the bill of lading records a contract entered into by the ship's captain, agreeing, subject to the risks of the sea, to carry the goods for the payment of a specified amount for freight and primage from the port of lading to the port of destination and to deliver them to the consignee named in the bill of lading or, if it were made out to order, to the consignee named in the endorsement on the back. In case a supercargo was carried, no endorsement was required, since the supercargo controlled the cargo; similarly, no endorsement was needed in

¹⁴ Logbook of schooner *Crenshaw* (6) under date of November 8, 1858.

¹⁵ The logs are kept together in a separate file, not with the individual cases, but have been microfilmed with their respective cases.

case a charter party existed. In cases where there was a supercargo, two sets of bills of lading are found in the files, for copies were held by both supercargo and captain. In cases, on the other hand, where the captain was himself the shipper, bills of lading may be absent.

In any case, there is usually a manifest or invoice. The manifest is a summary of the bills of lading, setting forth that on the ship, identified by name, class, and master, on a voyage between specified ports, there are a specified number of parcels of cargo, identified as to contents, and bearing the marks indicated on the bills of lading and the packages, consigned by a certain shipper or shippers at the port of departure to a specified person or persons at the port of destination. For obvious reasons, bills of lading and manifests on occasion employ euphemisms, such as "hardware" for cases of ammunition. Manifests are often duplicated by freight lists, which, however, add the freight and primage for each lot of cargo. Sometimes invoices are found. These give the estimated, and more frequently the actual, value of the consignments, with purchase prices and charges for customs, freight, commissions, and the like.

Generally speaking, the documents referred to above are the ones that may be expected in the file of every complete case. In order of their actual frequency they are: registers (or enrollments and licenses), manifests, invoices, bills of lading, articles, crew lists, clearance papers, and log books. But in most cases the files include many more papers as well.

Where ships were chartered, the charter party is included among the ship's papers. This is a contract between the shipowner, sometimes represented by the master, and a merchant shipper, leasing the ship for a voyage or series of voyages. In all the cases that passed through the New York prize court the ship was chartered to carry freight, and the price was fixed either on the basis of the carriage of an agreed number of parcels of freight at rates fixed per unit or on the basis of a lump sum for the voyage. In some cases provision was made for payment of a bonus. In all cases penalties were provided for de-

fault on the one hand, charges for demurrage or delay on the other.

Miscellaneous items very frequently found include receipted bills—shipchandler's bills, provision bills, repair bills, port bills, etc. In some cases there is a complete file of the bills for the fitting out of the ship for sea, and in a few cases appear the complete accounts of a voyage, including the costs not only of fitting out the ship but of securing the cargo, the amount realized on the sale of goods at the port of destination, the costs of cargo and ship on the return voyage, and the final accounting and division of profits.¹⁶ Other miscellaneous items include occasional certificates of inspection, such as a Lloyd's register¹⁷ or a certificate of the Crescent Mutual Insurance Office, on some of the Confederate ships.¹⁸ Insurance policies on freight and vessel, and navigation charts are filed away in some cases.

Also included among the papers found on shipboard, though not classifiable as ship's papers, are the private letters with which the files of many cases are replete. Among these in the first place are the letters addressed to captains by shipowners or shippers. These contain selling instructions, especially instructions on what to do in case the captain finds a port blockaded or in case the ship is stopped by a vessel of the blockading fleet. There are also letters to consignees with instructions about the disposal of specific cargoes and much marketwise information about prices and freight rates; often these letters reveal the interconnections of firms of merchants as well as their business methods. Innumerable personal letters also fell into the hands of the prize masters and were brought into port with the rest of the papers. There are private letters addressed to individual captains or other members of the ship's company, to supercargoes or to passengers, from friends and relatives. There are also letters that were running the blockade, written by people living in the Confederate states who sought to maintain con-

¹⁶ Cf. ship's paper in file of schooner *Mary Clinton* (15).

¹⁷ In file of ship *Cheshire* (48).

¹⁸ In file of the schooner *J. W. Wilder* (66).

tact with people abroad or even in the North. Many a family and many a friendship straddled the Mason and Dixon Line and had to seek the kind offices of a blockade runner to exchange news or greetings. Between North and South had grown up the usual but ever novelly ingenious method of correspondence by use of a neutral go-between. Many of the letters contain detailed directions for forwarding the letter through a number of hands, the intermediary usually including business concerns engaged in blockade running. A correspondent in Wilmington, North Carolina, for instance, writing on October 24, 1864, states: "Please enclose your letter in an envelope and address that envelope (the inside one) to me, put that in a second and address the second to I. Andrea & Co., Wilmington, N. C., put that in a third and address it to H. Miner, Nassau, N. P. and mail it in your P. O." ¹⁹

These private letters are fascinating for the human side of the picture of the war. It would be futile to attempt to indicate the nature of their content by selection, on whatever principle, of individual letters. Singly they are but fragments, containing scraps of information, bits of personal reaction. Yet they are the same type of crude raw material from which, by skillful handling, have been constructed comprehensive and well-integrated pictures of life in the Confederacy.²⁰ Though generally similar in character to the collections in a number of Southern universities, state libraries, and archives, they have a special element of their own arising from the fact that they were addressed to correspondents abroad or in the North. They tell not only what ordinary people were thinking and feeling and doing, what the struggle meant to them as they lived through it rather than looked back on it, but also what these people sought to convey to sympathetic listeners abroad, to people who were

¹⁹ Letter signed by Thomas Evans, found on steamer *Annie* (184) and filed with ship's papers.

²⁰ Bell Irwin Wiley, *The Life of Johnny Reb* (New York, 1943); also by the same author, *The Plain People of the Confederacy* (Baton Rouge, 1943).

not themselves experiencing the conditions they described. At the same time the universality of human nature is clearly evident; war letters are timeless, the poignancy of human suffering unchanging. The usual thought patterns of wartime recur again and again: the bravery of our soldiers; the criminality of the leaders of the enemy, "Will the God of Justice leave unpunished these crimes of Lincoln and his criminals?"; the treachery of the enemy, the new devices of torture they have invented, the poisoning of bullets and medicine; the righteousness of one's own cause, the morale of one's side, and the impossibility of defeat.

There are also letters traveling in the reverse direction, letters found on board ships that had failed in their efforts to slip past the blockading fleet into the harbors of the Confederacy and addressed to people within the blockaded area. Their contents are more varied, ranging as far afield as a description of the difficulties of missionary activities in Brazil²¹ and the gossip of a girls' school in Paris.²²

Besides the papers found on shipboard, there are the papers gradually accumulated as the case was prepared for court, the court papers proper. First there were the depositions in *preparatorio*, which, like the letters, provide the skeleton for many a story of human vagary, while at the same time they supplement the facts as to ships, cargoes, and profits of blockade running to be found in the ship's papers. Captains, mates, supercargoes, passengers, and crew members alike were questioned as witnesses under very strict rules of procedure by the prize commissioners.²³ The standing interrogatories consisted of forty-three questions, each subdivided into a number of parts.²⁴ The

21 Letter of A. G. Simonton to Rev. J. C. Lowrie, New York, dated September 11, 1861, Rio de Janeiro, found on bark *Empress* (50) and filed with ship's papers.

22 Letter to Mr. Victor Faisana in file of steamer *Stettin* (102).

23 Prize Rules of the District Court for the Southern District of New York adopted in May, 1861, Rules 13-20. A copy of these is printed in Blatchford, *Prize Cases*, pp. 673-682; see also Chapter III *infra*.

24 A copy of the standing interrogatories is printed in Blatchford, *op. cit.*, pp. 685-693.

questions were ingeniously contrived; many were similar, or were designed to elicit similar information, in the hope of trapping the unwary into betraying themselves if they were not telling the truth. So searching and detailed were the questions that it would be a rare person who could concoct an explanation which would hang together and be all of one piece. Not only was the danger of self-contradiction great; there was the fact that details were required which were subject to corroboration or correction by the depositions of other members of the ship's company. Many of the witnesses were illiterate and unlikely to be able to cope with the subtleties of the questions put to them. There remained, of course, the loophole of ignorance, real or feigned, and many of the depositions of crew members are sprinkled with the answer "I do not know." The prize commissioners were under orders, in such eventualities, to "admonish the witness that, by virtue of his oath taken to speak the truth, and nothing but the truth, he must answer to the best of his knowledge; or when he does not know absolutely, then to answer to the best of his belief concerning any one fact."²⁵

The questions were intended to evoke the fullest possible information about the vessel, the ship's company, the cargo, and the voyage. Each witness was asked about his birthplace, his place of residence, his citizenship, and the residence of his wife and family. He was questioned also about the nationality, the birthplace, and the residence of the master of the ship and of the master's family. Similar questions were put about the owners of the ship and owners of the cargo, as well as about the nationality of the other members of the ship's company. He was asked how long he had known the vessel, whether she had ever sailed under another name, where she had been built, who owned her and who had owned her previously, and whether she had sailed under letters of marque and reprisal, as a privateer, or under convoy. There were extended questions about the cargo, the bills of lading, and insurance, and detailed

²⁵ Prize Rule 14.

questions about the voyage and the lading of the ship, as well as about the laders and consignees. Finally, there were, of course, questions as to whether she had carried contraband or guns and ammunition, and about the details of the capture. The answers incorporated in the depositions *in preparatorio* provide a wealth of information about the voyage of the ill-fated ship and even something of her previous history, her former owners, her previous voyages, and the cargoes she had carried.

In addition to the depositions *in preparatorio* there are the court papers recorded in the *Admiralty Docket* and filed with the respective cases. Although they are stiffly formal in character, they reveal much interesting and unexpected information, especially in the evidence sometimes submitted along with the more formal claims. The libel, which opened the case in the sense that it initiated court action, had before the end of the first year of the war become a standardized printed form. The monitions, too, were standard forms. In fact, all the official court papers—motions, orders, and decrees—were standardized documents, in themselves able to contribute little of interest to the historian. With them, however, were often filed briefs or notes for the arguing of the case. These papers, though for the most part merely summarizing material found elsewhere, in the ship's papers or in the depositions, often provide additional details of interest.

The main source of new information furnished by the court papers, however, is to be found in two other series of papers: the evidence submitted as exhibits by the claimants; and the prize commissioners' reports on the value of prize goods, together with the marshal's reports on the sales of prize goods.

The exhibits are very varied, submitted by divers claimants in support of their claims and answers to libels. They occur in two types of cases. In the one type neutral claimants of prize ships or cargoes were seeking to prove their ownership of the property at stake. In the other type neutrals were endeavoring to establish that the voyage on which the prize was engaged when captured was in fact a legitimate business venture, with

no intention of violating the blockade of the Southern ports, and that therefore the capture was unwarranted. In support of their allegations they submitted business letters, insurance policies, and affidavits of members of the firms involved or of their clerks. These have value for the light they shed on business ventures of the times, for the accounts given are in many cases quite detailed.

Another source of material for the economic historian consists of the reports of the prize commissioners and the accounts of the marshal. To the former are in every case appended the appraiser's reports, supplying itemized accounts of the goods found on board, as well as of the vessels themselves. Attached to the marshal's bill for disbursements while the prize was in his custody is the auctioneer's bill, with a full statement of the property sold and of the prices realized, item by item. Often the files contain the printed catalogues of the goods auctioned; these bear, in ink or pencil, the prize commissioner's notation, both of the price at which the item was appraised and of the amount realized at the auction. These accounts thus provide a rather complete series of prices of goods sold at auction in New York City during the Civil War years. The marshal's bill for disbursements also sets forth costs of pilotage, towage, wharfage, repairs to vessels, and storage of cargo. These are complete for the years 1861 to 1865.

The last group of papers included among the files of the New York prize court is made up of the papers of the prize commissioners. First among these is the *Prize Commissioners' Register*, in two volumes, which might be called a docket book of prize cases, 1861-1865. All prize cases brought under their jurisdiction from May 23, 1861, the date of their appointment, are listed in the order in which they were turned over to the prize commissioners. A new page was devoted to each case, headed by the name of the prize, and entries were made, day by day, of all that was done by the prize commissioners with respect to it; some pages are nearly blank, but other cases required several pages before their final disposition. There was

also a cargo book, in which the itemization of the cargo of each vessel was similarly recorded on a separate page; this book is cross indexed with the *Register*.

The files of the prize commissioners are not complete. Various accounts, books, and letters were deposited with the clerk of the court when the commissioners had completed their work. They include a series of letters, filed simply under date of receipt. Marginal notes on these letters serve as some guide to the answers that were sent, but no letter book has been found. Miscellaneous papers include various odds and ends: copies of the prize rules and the standing interrogatories, with certain passages underlined; copies of statutes bearing on prize matters, such as Section 12 of the Act of July 17, 1862, the joint resolution of Congress of the same date, and the Act of June 30, 1864. There is the manuscript of the brief submitted to Judge Betts by Mr. Owen in support of the proposed schedule of fees of the prize commissioners, the account of the expenses of Prize Commissioner Elliott's office during the year 1863; and one checkbook has survived.

These prize commissioners' papers, though entrusted to the custody of the clerk of the court, are not strictly court papers, but for obvious reasons they have been included in the microfilm of prize court papers.

CHAPTER II

THE BACKGROUND OF THE NEW YORK PRIZE COURT

It is frequently assumed as axiomatic that the United States is unprepared for war. Whether this proposition holds more truth than the related popular belief that Americans are a peace-loving people need not be discussed here. Certainly, however, the course and conduct of the Civil War afford support for the doctrine of American failure to make adequate advance preparations for critical situations. Blockade of the Confederate ports was clearly indicated as a vital weapon against the rebellion of an area, whose economy, with its emphasis on cotton and tobacco, was so one-sided in its organization that mining and manufacturing had been ignored, and essential finished goods for its army, as well as its civilian population, would have to be imported from abroad.¹ On April 19, 1861, a week after the firing on Fort Sumter, the boiling-over point of a war that had been simmering so many months, Lincoln proclaimed a blockade of the ports of South Carolina, Georgia, Alabama, Florida, Mississippi, Louisiana, and Texas,² and on April 27 extended it to include the ports of Virginia and North Carolina, which had seceded in the interim.³ But for the enforcement of this blockade of over 3000 miles of coastline the Navy had only 42 ships in commission. Of these only 24 were steamers—if two mere tugs and one vessel on the lakes be omitted—and even these were scattered on distant stations; only three were in Northern waters ready for immediate ac-

1 John Christopher Schwab, *The Confederate States of America, 1861-1865* (New York, 1901), p. 2.

2 Proclamation of April 19, 1861, as quoted in James D. Richardson, *A Compilation of the Messages and Papers of the Presidents*, prepared under the direction of the Joint Committee of the House and Senate, pursuant to an Act of the 52nd Congress of the United States (1898), VI, 14-15.

3 Proclamation of April 27, 1861, *ibid.*, p. 15.

tion.⁴ In addition the Navy was confronted with the task of protecting Northern commerce against the expected raids of Jefferson Davis' privateers, for two days prior to the proclamation of the blockade applications had been invited for letters of marque and reprisal to be issued under the seal of the Confederate States.⁵

Almost but not quite equal to the unpreparedness of the fleet was the unpreparedness of the authorities to deal with the captures made by the vessels engaged in the blockade. Captures had to be ratified by the prize courts, and were, therefore, sent under prize masters to convenient ports where their cases could be adjudicated.⁶ Under the Judiciary Act of 1789, and the decision in *Glass v. the Sloop Betsey*, all the powers of a court of admiralty, "both instance and prize," were vested in district courts of the United States.⁷ The principal district courts that were called upon to deal with Union prize cases during the Civil War were, naturally, those located on the seacoast—New York, Boston, Philadelphia, Providence, Baltimore, Washington, and Key West.⁸ The New Orleans District Court, which was to become one of the most active Union prize courts, became available only after the capture of that city by Union naval forces in April, 1862, although prior to that time it had functioned in that capacity for the Confederacy.⁹ A number of captures on the Mississippi, particularly cotton, were adjudicated in the district court at Springfield, Illinois.

4 James Russell Soley, *The Blockade and the Cruisers* (New York, 1883), p. 13 and appendix, pp. 241-243.

5 James D. Richardson, *Compilation of the Messages and Papers of the Confederacy* (Nashville, 1906), I, 60-2.

6 John Bassett Moore, *A Digest of International Law* (Washington, 1906), vol. VII, Section 1212, p. 514.

7 3 Dall. 6; Moore, *op. cit.*, vol. VII, section 1222, p. 585.

8 *Compilation of Laws and Decisions of the Courts relating to War Claims* (Washington, 1912), pp. 195-235.

9 William M. Robinson, Jr., *The Confederate Privateers* (New Haven, 1928), p. 40, note 13, p. 42.

The state of affairs at Key West is well described in a letter from the new clerk of the court there to the prize commissioners at New York asking for guidance in his new role as prize commissioner. This worried official stated that the former clerk, the marshal, and the district attorney had turned against the Union and had had to be replaced; only the judge survived from the "old regime," and prize law was new business to him.¹⁰ Although no such revolutionary change occurred in the personnel of the northern courts, it appears that they, too, were almost equally unprepared for the emergency. Prize law is the law of a country at war, and, with the exception of the short interlude of the Mexican War, the United States had been at peace for almost fifty years. Judges and lawyers were, therefore, not well acquainted with prize law, and what knowledge they had was mainly academic. Even the authoritative text book on American admiralty procedure, Erastus C. Benedict's *The American Admiralty, Its Jurisdiction and Practice*,¹¹ the first edition of which was published in 1850, had only a short chapter of three pages devoted to prize causes, because that was all that seemed necessary for the practising attorney. Benedict, himself, was to play an active role as proctor before the New York prize court, and the second edition of his text, published in 1870, gives a slightly fuller treatment of prize procedure. As Augustus F. Smith, attorney for the owners of the *Peterhoff* (151), phrased it in July, 1863, "If your honor please, the proceedings in prize cases are very well understood at this day,

¹⁰ Letter of George D. Allen, clerk and prize commissioner at Key West, to the New York prize commissioners, August 2, 1861—filed under date of receipt, August 21, 1861, in the manuscript correspondence of the prize commissioners, U. S. District Court, Southern District of New York.

¹¹ Erastus C. Benedict, *The American Admiralty, Its Jurisdiction and Practice, with Practical Forms and Directions* (New York, 1850). Second edition, New York, 1870. The first edition, dedicated to Judge Samuel R. Betts of the District Court, Southern District of New York, devoted three pages (pp. 281-3) to prize procedure, while the second edition, dedicated to Judge Samuel Nelson of the Circuit Court of New York, treated prize procedure in five pages (pp. 301-305).

although when this war began most of us had no experience in them." ¹²

Uncertainty is clearly reflected in the correspondence of the prize commissioners included among the papers of the New York prize court.¹³ And yet these were the men to whom was entrusted the main task of arranging for the preliminaries upon which the prosecution was to rest its case for the condemnation of the prize. One of the officials of the New York prize court approached Francis H. Upton, a member of the New York Bar with some experience in prize cases, and known for his interest in the subject, and urged him to prepare a work on prize practice and procedure. Mr. Upton complied, and his book was published in 1861.¹⁴ It includes in its introduction a letter to the author signed by the two prize commissioners for New York and by no less an authority on admiralty law than Judge Betts, justice of the District Court of the Southern District of New York.¹⁵ The letter suggested that Mr. Upton undertake the work of summarizing practice and proceedings in prize courts, which "will be of great value to the profession and to suitors before the Prize Courts of the country" and will "supply, in this respect, the urgent want of the profession and of the community."¹⁶ This book was subsequently described by

¹² *The British Steam-ship "Peterhoff" . . .* (New York, 1863), p. 140. A copy of this report, presented by E. D. Smith, the Federal District Attorney, to Judge Samuel Blatchford, is among the prize papers of the New York prize court, filed in the *Peterhoff* folder (151), *Admiralty Docket*, vol. 17, p. 494.

¹³ Manuscript correspondence of the New York prize commissioners, *passim*.

¹⁴ Francis H. Upton, *The Law of Nations affecting Commerce during War with a Review of the Jurisdiction, Practice and Proceedings of Prize Courts* (New York, 1861). This book was to go through three editions by 1863.

¹⁵ Judge Betts was to hear prize cases in New York—and in 1862 at least "to the entire exclusion, for many months of all other business." Letter of E. D. Smith to Gideon Welles, June 23, 1862. *Mss. Miscellaneous Prize Matters. 1861-1871*. No. 24 U. S. Navy Department Archives.

¹⁶ Upton, *op. cit.*, p. iii.

Gideon Welles, the Secretary of the Navy, as "the latest and fullest, and upon the whole, the most accurate Manual in Prize Law and Proceedings in the English language, which the Supreme Court in its latest judgment in prize cited as authority." ¹⁷

It is true that in the decades preceding the Civil War American jurists had had no occasion to make practical application of prize law, and study of the subject had therefore necessarily been mainly academic. Yet it is, perhaps, fair to emphasize that the lack of familiarity was not so much with the principles of prize law as with the details of the procedure and practice involved in the prosecution of prize cases.

Proceedings in prize cases are, of course, based on the "legislation of Congress and the usage and practice of courts of admiralty in prize causes." ¹⁸ To a great extent, and quite naturally, prize law as administered in the American admiralty courts is based on the rules and decisions of the English prize courts. The famous note "*On the Practice in Prize Causes*" in the appendix to volume I of Wheaton's *Reports* is introduced with the following statement: "This outline will be principally copied from the rules of the British courts, which so far as cases have arisen to which they could apply have been recognized and enforced by the Supreme Court of the United States." ¹⁹ One may perhaps take as the starting point of American prize law, or at least of treatises on American prize law, the often quoted and frequently cited letter of Sir William Scott and Sir John Nicholl to Chief Justice Jay, written in September, 1794. Jay, then in England attempting to adjust points in dispute between the United States and Great Britain, requested and received from Sir William Scott, the eminent English admiralty jurist, at that time Advocate-General, "a statement of the general principles of proceedings in prize causes, in British courts of

¹⁷ Gideon Welles, *Diary* (New York, 1911), I, 466.

¹⁸ Moore, *op. cit.*, VII, 585.

¹⁹ I Wheaton, App. note 2, p. 494.

admiralty, and of the measures proper to be taken when a ship and cargo are brought in as a prize within their jurisdiction.”²⁰ Sir William, later raised to the peerage as Lord Stowell, was destined to serve on the High Court of Admiralty for a generation (1798-1827) and was to leave an imprint on British admiralty law comparable to that left by Chief Justice Marshall on the constitutional law of the United States.

In America, the formulation of prize law was chiefly the work of Justice Joseph Story, and he was profoundly influenced by the decisions of Lord Stowell. In a letter to him dated January 14, 1819, accompanying a volume of reports of Story's decisions, Justice Story wrote: “I return you also my sincere thanks for the favorable manner in which you have been pleased to speak of the former volumes, the decisions in which, whatever may be their merits in other respects, were made under an anxious desire to administer the law of Prize upon the principles which had been so luminously pointed out by yourself.”²¹ It was Story who wrote the well known notes on prize practice printed in the appendices of volumes I and II of Wheaton's *Reports*.²² These, in addition to his decisions and to the unsigned

²⁰ Letter of Sir William Scott and Sir John Nicholl to Mr. Jay, Minister to England, September 10, 1794, quoted in Moore, *op. cit.*, VII, pp. 603-608.

²¹ Quoted in *The Life and Letters of Joseph Story* edited by his son, William M. Story (Boston, 1851), I, 318. In his inaugural lecture as Dane Professor of Law in Harvard, August 25, 1829, he stated: “And, above all, I shall endeavor to avail myself of these masterly judgments, full of wisdom and learning, and captivating eloquence, which have been pronounced within the last thirty years by a man [Lord Stowell] to whom in my deliberate opinion, the world is more indebted for a practical exposition of the law of nations . . . than to all jurists of all former ages.” Joseph Story, *Miscellaneous Writings*, edited by his son, Wm. Story (Boston, 1852), p. 539.

²² Henry Wheaton, Supreme Court reporter (1816-1827) did not reveal the authorship of these notes; this was in accordance with Judge Story's stipulations: “I made it an express condition, that the notes furnished by me should pass as his own.” Extract from a memo book of Judge Story under date of June 12, 1819. Quoted in *Life and Letters*, I, 283. Wheaton, himself, was the author of *A Digest of the Law of Maritime Captures and Prizes*, published in 1815, the year of his appointment as Justice of the Marine Court of the City of New York.

article on prize which he contributed to the *Encyclopaedia Americana* edited by his friend, Francis Lieber,²³ constituted the principal body of American prize law.

In 1838 Judge Samuel Rossiter Betts of the United States district court in New York City published a volume on admiralty procedure based on local precedents.²⁴ Admittedly an outline, this work included the new prize rules adopted in 1838, which with slight modifications were to be employed by the New York prize court constituted early in the Civil War (May 1861).²⁵ A more elaborate attempt at systematic discussion of American admiralty jurisprudence was represented by Benedict's *American Admiralty*, already mentioned. The district court at Key West, in the emergency referred to, adopted the rules in Benedict bodily, along with the standing interrogatories in the appendix of volume I of Wheaton and the additional interrogatories in the first volume of Robinson's English admiralty reports.²⁶ Benedict's treatment of prize procedure, however, was intentionally very slight, as has been said, covering barely three pages.²⁷ Other writers on international law, however, had been more generous in their treatment of prize law. Henry Wheaton, who might be considered second only to his friend Mr. Justice Story in his knowledge of prize law in the United States, had published in 1815 a digest of maritime and prize law.²⁸ Twenty years later, after extensive experience abroad as

23 *Encyclopaedia Americana*, edited by Francis Lieber assisted by E. Wigglesworth (Philadelphia, 1829-1833). "Prize" is in volume X. For authorship, cf. *Life and Letters*, II, 27.

24 *A Summary of Practice in Instance, Revenue and Prize Causes in the Admiralty Court of the United States, for the Southern District of New York; and also on Appeal to the Supreme Court: together with the Rules of the District Court* (New York, 1838).

25 MSS *Rough Minutes of the United States District Court, Southern District of New York*, vol. 14, p. 622.

26 Letter of George D. Allen, first August 21, 1861, in manuscript correspondence of the New York prize commissioners.

27 Pp. 281-283.

28 *A Digest of the Law of Maritime Captures and Prizes* (New York, 1815).

American Charge d'Affaires in Denmark and later Minister to Prussia, and after continuing his studies of both French and English law, Wheaton published his widely known *Elements of International Law*.²⁹ By the outbreak of the Civil War it had gone through six editions; the seventh was brought out by the editor of the sixth edition, William Beach Lawrence, in 1863. But here again, the treatment of prize was much thinner and more theoretical than the treatment in the eighth edition, published in 1866 under the editorship of Richard Henry Dana, Jr.³⁰ Mr. Dana had had much practical experience in prize courts during the war. As United States District Attorney for Massachusetts, he had prosecuted the cases in the prize court at Boston, and the famous case of the *Amy Warwick* before the Supreme Court on appeal. Together with Judge Sprague, of the District Court of Massachusetts, Dana had prepared the standing interrogatories for the Massachusetts court,³¹ and, at the request of the Secretary of the Navy, they had also drafted the Prize Act of 1864.³² The authorities cited by Mr. Dana in his note on prize procedure are, in addition to Story's decisions and notes in Wheaton, four brief pages in Kent's *Commentaries* and two books on international law, Halleck and Phillimore.³³ Phillimore's treatment provides the most elaborate discussion. He presents a rather detailed study, but for the most part he depended for American procedure on Story's notes, which had been brought out in an English edition in 1854 by Frederick Thomas Pratt.³⁴

29 Philadelphia, 1836.

30 Dana was sued by Lawrence for plagiarism. For discussion of the case see Charles F. Adams, *Richard Henry Dana, Jr.: A Biography*, 2 vols. (Boston, 1890).

31 *Decisions of Hon. Peleg Sprague in Maritime, Admiralty, and Prize Causes in the District Court of the United States for the District of Massachusetts, 1854-1864*, 2 vols. (Boston, 1868), II, 57.

32 *Ibid.*, II, 326.

33 Wheaton, *Elements* (8th Edition), pp. 480-487.

34 Robert Phillimore, *Commentaries upon International Law*, 3 vols. (Philadelphia, 1854-1857), III, 518, note R.

The situation, therefore, was by no means as bad as during the War of 1812. At that time the Supreme Court had had to reprimand the district courts for their ignorance of proper prize procedure. In the decision in the case of the *Dos Hermanos* the Supreme Court had said:

This court cannot but watch with considerable solicitude irregularities, which so materially impair the simplicity of prize proceedings and the rights and duties of the parties. Some apology for them may be found in the fact, that from our having been long at peace, no opportunity was afforded to learn the correct practice in prize causes. But the apology no longer exists; and if such irregularities should hereafter occur it may be proper to adopt a more rigorous course and to withhold condemnation in the clearest cases, unless such irregularities are avoided and explained.³⁵

Even more emphatically had it criticized the District Court of Georgia in the case of the *Pizarro*, flatly stating that:

The proceedings in the district court were certainly very irregular; and this court cannot but regret that so many deviations from the correct prize practice should have occurred at so late a period of the war.³⁶

Since those days Story's work in systematizing prize law and procedure had borne fruit. In point of theory all that was necessary was to dust off the pertinent volumes in one's law library. In practical application, however, matters were more difficult.

In general there seems to have been little concerted action in the various district courts, save with respect to the vexed problem of fees. Providence adopted the additional prize interrogatories of the New York court.³⁷ At Boston, Prize Commis-

³⁵ 2 Wheaton, 76.

³⁶ 2 Wheaton, 240.

³⁷ Letter of Wingate Hayes, U. S. District Attorney in Providence, Rhode Island, filed under date of September 24, 1861, in the manuscript correspondence of the New York prize commissioners.

sioner Arthur Dexter, in acknowledging receipt of the additional interrogatories forwarded by the New York prize commissioners, merely adds that he is in the same predicament as to fees and that if a fixed tariff is secured, "I shall be glad to receive it—confidentially, of course."³⁸ The Philadelphia prize commissioner, prompted, perhaps, by the spirit of brotherly love, queried "Pray do you not think that a clause which would require the prize commissioners in New York to share their emoluments with their less favored brethren in other cities would be desirable?"³⁹

The correspondence of the prize commissioners discloses their uncertainty about other questions of procedure, such as the problem of costs where restitution was decreed without any provision for the costs of the suit, the role of the counsel for captors, the custody of prizes, interlocutory sales, and the delivery of prize property on bail to the claimants. Some of these questions persisted for some length of time,—thus, provision for costs in case of restitution was not determined until 1863.⁴⁰ But, slowly, these difficulties were resolved. For the most part clarification came through the various statutes passed during this period, through interpretation of these statutes by the Attorney General and the Solicitor of the Treasury, through the rules of procedure adopted by the several courts, and through the decisions of the judges of the district and circuit courts and of the Supreme Court.

On one question there was certainty. The President's proclamation, the orders of the Secretary of the Navy, the decisions of the judges, all agreed that the blockade was to conform to the recognized rules of the Law of Nations. The most recent

³⁸ Letter of Arthur Dexter, filed October 12, 1861, *ibid.*

³⁹ Letter of Henry Flanders, filed March 20, 1862; also *cf.* letters of Flanders under dates of August 27, 1861, September 7, 1861, and March 18, 1862, *ibid.*

⁴⁰ Act of March 3, 1863, c. 86, entitled "An act further to regulate Proceedings in Prize Cases and to amend various Acts of Congress in relation thereunto." 12 Stat., 759.

formulations of international law had been the Declaration of Paris of 1856. It is true that the United States had declined to accede to this declaration on the ground that she "could not forego the right to send out privateers, which in the past had proved her most effective maritime weapon in time of war, and which, since she had no large navy, were essential to her fighting power."⁴¹ The United States, however, had raised no objection to Article 4:

Blockades, in order to be binding, must be effective; that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy.⁴²

In fact, this principle was duly embodied in Lincoln's proclamation of the blockade:

For this purpose a competent force will be posted so as to prevent entrance and exit of vessels from the ports aforesaid. If therefore, with a view to violate such blockade, a vessel shall approach, or shall attempt to leave any of the said ports, she will be duly warned by the commander of one of the blockading vessels, who will endorse on her register the fact and date of such warning, and if the same vessel shall again attempt to enter or leave the blockaded port, she will be captured and sent to the nearest convenient port, for such proceedings against her and her cargo, as prize, as may be deemed advisable.⁴³

Similarly, the instructions sent by the Navy Department on May 1, 1861, to the officers commanding the Atlantic Blockading Squadron state:

⁴¹ Despatch of Mr. Marcy, Secretary of State, to Count Sartiges, French Minister, July 28, 1856, quoted in *Correspondence respecting International Maritime Law*, presented to both Houses of Parliament by command of Her Majesty, 1862, North America, No. 3, app. p. 30.

⁴² As quoted in Moore, *op. cit.*, VII, section 1221, p. 562. Cf. also pp. 565-569.

⁴³ Richardson, *Messages and Papers of the Presidents*, VI, 14-15.

It will not be improper to state to you that a lawful maritime blockade requires the actual presence of an adequate force stationed at the entrance of the port, sufficiently near to prevent communication. . . . You will permit no neutral or foreign vessel proceeding toward the entrance of a blockaded port to be captured or detained if she shall not have previously received from one of the blockading squadron a special notification of the existence of the blockade. . . .

The United States have at all times maintained these principles on the subject of blockade, and you will take care not to attempt the application of penalties for a breach of blockade except in cases where your right is justified by these rules.⁴⁴

The courts were no less emphatic in their insistence that recognized rules of international law, which for the most part antedated the Declaration of Paris, be upheld. As Judge Betts stated in his decision in the cases of the *Sarah Starr* (20) and of the *Aigburth* (26), which were heard concurrently before him:

There can be no doubt that it is incumbent on the United States to establish the fact that an adequate force was assigned and stationed off these ports at the time of the egress from them of the above-named vessels, so as to render the ingress or departure to or from the ports dangerous. There need not be a closed cordon of vessels surrounding the places at all times, so as absolutely to command all approaches to the ports from without, or departure from them from within. The blockade must, however, be so sustained by competent forces as to render it efficient to all ordinary intent and apprehension. This, of course, admits of the accidental absence of blockading vessels from stress of weather or other contingencies, and will also dispense with the employment of the more active and rapid services of steam vessels in such accumulation of watchful forces as is sometimes exacted when ships moved by canvas only are used. What the law demands is the allotment and stationing of that amount of force for the service which

⁴⁴ As quoted in Soley, *op. cit.*, p. 83.

shall render it physically hazardous for other craft to evade the blockade. To that end, the blockading forces must be such as to constitute an actual investment of the place blockaded. The English and American cases concur in all essentials as to the lawful constituents of a blockade in modern times, and the manner in which it shall be enforced (1 Kent's Comm., 144-161; 3 Phillimore on International Law, 387, art. 294; the Nornen, 1 Spinks Prize Cases, 171; The Franciska, Id., III.)⁴⁵

Furthermore, it was incumbent upon the government to prove the adequacy of the blockade. In the case of the *Prince Leopold* (23), a vessel captured in New York harbor on a voyage from New Bern, a blockaded port, Judge Betts ruled:

The libellants are permitted to give further proofs on the question of breach of blockade, if offered within ten days after notice of this decree. The report of the Navy Department to the Secretary of State, dated July 24, 1861, does not supply definite and adequate statements of the forces actually maintaining the blockade off the ports of Newbern, or in that direct vicinity. It must be presumed to be within the competency of the Navy Department to prove affirmatively the acts of blockade performed by the squadrons, or particular vessels assigned to that service.⁴⁶

In his decision in *The Sarah Starr* (20), which was to govern all three cases, Judge Betts concluded:

If no further proofs are offered, pursuant to the terms above mentioned, then a final decree is to be entered in favor of the libellants for the condemnation and forfeiture of both of the aforesaid vessels and their cargoes as enemy property, and in favor of the claimants, acquitting the said vessels of the charge of having violated the blockade aforesaid in leaving the said ports, . . .⁴⁷

⁴⁵ Blatchford, *Prize Cases*, p. 87.

⁴⁶ *Ibid.*, p. 91.

⁴⁷ *Ibid.*, p. 89.

These decrees of Judge Betts were affirmed on appeal to the Circuit Court.⁴⁸

The first case in the New York prize court was libeled on the 24th of May, 1861,⁴⁹ barely five weeks after the proclamation of the blockade.

Considering the proportions of the task and the state of the Navy it is not surprising that the blockade did not begin to function immediately. The amazing thing is that it began to function so soon. It was the task of the Navy to accomplish the almost impossible. The London *Economist* declared:

... it is endeavoring to establish the greatest blockade ever known or contemplated since navigation has been an art. We cannot believe that it will succeed; we have no faith that such a blockade can be effectual; and upon our Government will lie the difficult, the delicate, but the pressing duty of enabling our ships to disregard it with impunity so long as it is ineffectual.⁵⁰

The coastline to be blockaded was well over 3000 miles. The Secretary of the Navy reported that the blockade, "according to an accurate table of measurement carefully prepared at the Coast Survey Office covers a distance of 3,549 statute miles (3,116 nautical miles), with one hundred and eighty-nine harbors or river openings or indentations, and much of the coast presents a double shore to be guarded."⁵¹ There appeared a total of ninety vessels on the navy lists, but of these ninety, twenty-one were classified as unserviceable. Of the remaining sixty-nine, forty-two were in commission, but sixteen of these were sailing vessels, and therefore too unreliable for the purposes of a modern blockading fleet. Of the steamers in com-

48 July 17, 1863. Cf. notes on pages 80 and 91 in Blatchford, *Prize Cases*.

49 The *Hiawatha* (2), *Admiralty Docket*, Vol. 10, p. 327. MSS Records of the District Court of the United States for the Southern District of New York.

50 *The Economist*, October 26, 1861, XIX, No. 948, p. 1178.

51 *Annual Report of the Secretary of the Navy*, December 7, 1863, p. 1.

mission, one was a tender stationed at Washington, seven were in the Pacific, three in the Mediterranean, four on the coast of Africa, and two off Brazil. Only eight steamers were in nearby waters; of these only three, the *Pawnee*, the *Mohawk*, and the *Crusader*, were at Northern ports, while two were at Pensacola, two were returning from Vera Cruz, and one from Japan.⁵²

With such slender forces it seemed incredible that the blockade could be made effective. The Navy showed tremendous energy in assembling the scattered vessels and fitting out all serviceable vessels in reserve. In addition to pressing forward the new sloops already authorized by Congress, the government placed orders with private yards for the "ninety-day gunboats" and "double-enders."⁵³ For the most part, however, the Navy was forced to rely on converted merchantmen. "By the first of July, [1861] twelve steamers had been bought, and nine were employed under charter."⁵⁴ In all, 136 vessels were purchased in 1861, 79 of these being steamers. The vessels thus acquired were a miscellaneous lot, ranging from 2000 ton steamers to ferry boats.⁵⁵ The number of vessels bought during the whole war amounted to 418, of which 313 were steamers.⁵⁶ Once the blockade had begun to function, many of the captured blockade runners were taken at their appraised value by the Navy and did invaluable service as members of the blockading fleet.⁵⁷ By

⁵² Soley, *op. cit.*, Appendix A, pp. 241-243; *Annual Report of the Secretary of the Navy*, December 2, 1861, p. 9.

⁵³ Soley, *op. cit.*, p. 19.

⁵⁴ *Ibid.*, p. 17.

⁵⁵ *Annual Report of the Secretary of the Navy*, December 2, 1861, p. 11, and listed by name, class, etc., pp. 125-132. Soley, *op. cit.*, p. 18 makes mention of 137 in all, but both text and lists of the Secretary's report indicate 136 ships in all.

⁵⁶ Soley, *op. cit.*, p. 18.

⁵⁷ The British steamer *Memphis* (116) belonging to T. S. Begbie was captured off Charleston harbor in July, 1862. Brought before the New York prize court, she was taken by the government at an appraisal of \$103,000

December 2, 1861, the Secretary of the Navy reported that the Navy consisted of 264 vessels, with 2,557 guns and a tonnage of 218,016 tons.⁵⁸ By the end of 1862, it consisted of 427 vessels,⁵⁹ and by 1864, of 671.⁶⁰

The first warning that a blockade had been put into effect was issued by Commodore Pendergrast on April 30, 1861. He claimed to have sufficient force for the efficient blockading of the ports of Virginia and North Carolina.⁶¹ On the following day the Atlantic Blockading Squadron was formally organized, and Commodore Stringham was appointed commander and given the instructions already cited.⁶² A separate Gulf Blockading Squadron was organized and placed under the command of Flag Officer William Mervine.⁶³ As the number of the blockading vessels increased, each squadron was divided into two parts for the sake of increased efficiency. The North Atlantic Blockading Squadron was responsible for the coast of Virginia and North Carolina; the South Atlantic Blockading Squadron blockaded the ports from the northern boundary of South Carolina to Cape Florida; the Gulf coast was blockaded by the East and West Gulf Blockading Squadrons, with Pensacola marking the point of division.⁶⁴

The blockade had been slow in getting started. Formal notice of its establishment was given by the blockading vessels as they took up their several stations. Although on April 30th general notice of the blockade of the ports of Virginia and North Caro-

pending the outcome of the case. In the United States service she captured the steamer *Ouachita* (137), also owned by Begbie in October, 1862. See files of steamer *Memphis*, *Adm. Docket*, vol. 17, p. 240, and of steamer *Ouachita* (137), *Adm. Docket*, vol. 17, p. 385.

⁵⁸ *Annual Report*, p. 11.

⁵⁹ *Annual Report* of Secretary of the Navy, December 2, 1862, pp. 26-28.

⁶⁰ *Annual Report* of Secretary of the Navy, December 5, 1864, p. xxiii.

⁶¹ Quoted in Upton, *op. cit.*, appendix p. 487.

⁶² See page 38, *supra*; Soley, *op. cit.*, p. 82.

⁶³ *Ibid.*, p. 121.

⁶⁴ *Ibid.*, pp. 90, 123.

lina had been given by Commodore Pendergrast, his fleet at Hampton Roads was adequate for the blockade of Virginia only. The coast of North Carolina was left unguarded⁶⁵—in fact, Wilmington was to remain the last port open for blockade runners until it was captured in 1864.⁶⁶ By May 11th, the *Niagara* appeared off Charleston, South Carolina, and made the mistake of warning vessels off the whole southern coast, but she stayed only four days before leaving for the Gulf. The *Harriet Lane* appeared off the bar of Charleston on the 19th, “and cruised for some days near that part of the coast,” but until the *Minnesota* arrived on May 28th,⁶⁷ a fortnight later, no blockade was in effect. On the same day the *Union* gave notice of the blockade of Savannah.⁶⁸ The Gulf ports—Mobile, New Orleans, and the several passes of the Mississippi—were also notified in May and June, and Galveston on July 2nd.⁶⁹ During this time the effectiveness of the blockade depended mainly on the extent to which its declared existence tended to scare off the more timid merchant captains. Virginia, of course, was effectively blockaded by the vessels stationed at Hampton Roads and closing access to the Chesapeake.

The energy of the Navy Department in securing, fitting out, and dispatching vessels to blockading stations, has already been commented upon. Although at the beginning the task seemed almost impossible, slowly but effectively the combination of an increased number of ships and a strategy that gradually seized and thereby closed the Confederate ports secured a strangle hold on the Confederacy. Confederate commerce was left almost exclusively in the hands of professional blockade runners, which, prepared for the particular circumstances, took their

65 *Ibid.*, p. 32.

66 *Annual Report of the Secretary of the Navy*, December 5, 1864, p. v.

67 Soley, *op. cit.*, p. 84.

68 *Ibid.*, p. 35.

69 *Ibid.*, p. 121.

chances, blacked out, in slipping past the blockading fleet on dark and moonless nights.

It is true that opinions have differed as to the effectiveness of the blockade. Professor Soley of the Naval Academy, writing in 1883, said:

As to the legal efficiency of the blockade after the first six months, there can be no question; and by the end of the second year its stringency was such that only specially adapted vessels could safely attempt to run it. If proof of its efficiency were needed it could be found in the increased price of cotton and in the scarcity of manufactured goods at the South. In the last year it became as nearly perfect as such an operation can be made.⁷⁰

On the other hand, Professor Owsley, in 1931, seriously questioned the effectiveness of "a blockade, which, for two years at least, made the old-fashioned English blockade look like a stone wall in comparison."⁷¹ There is no doubt that high rates of profit continued to be made by successful blockade runners. At the time, certainly, the effectiveness of the blockade was recognized by the prize courts. For that matter, the British government did not challenge the effectiveness of the blockade, despite reports from its naval officers of the weakness of the blockade at certain points and despite its obvious interest in maintaining trade relations with the South. In February of 1862 Earl Russell, then Foreign Secretary, wrote to Lord Lyons, representing his government at Washington, the following statement of policy:

Her Majesty's Government, however, are of opinion that assuming that the blockade is duly notified, and also that a number of ships is stationed and remains at the entrance of a port, sufficient really to prevent access to it or to create an evident danger of entering or leaving it, and that these ships

⁷⁰ *Ibid.*, p. 43.

⁷¹ Frank Lawrence Owsley, *King Cotton Diplomacy* (Chicago, 1931), p. 290.

do not voluntarily permit ingress or egress, the fact that various ships may have successfully escaped through it (as in the particular instances here referred to) will not of itself prevent the blockade from being an effective one by international law.⁷²

A year later, Earl Russell further clarified the position of his government in a letter to Mr. Mason, the Confederate Commissioner in England seeking the recognition of the Confederacy.

I have to say that Her Majesty's Government see no reason to qualify the language employed in my despatch to Lord Lyons of the 15th of February last. It appears to Her Majesty's Government to be sufficiently clear that the Declaration of Paris could not be intended to mean that a port must be so blockaded as really to prevent access in all winds, and independently of whether communication might be carried on in a dark night, or by means of small low steamers or coasting craft creeping along the shore; in short, that it was necessary that communication with a port under blockade should be utterly and absolutely impossible under any circumstances. . . .

The adequacy of the force to maintain the blockade must indeed always, to a certain extent, be one of fact and evidence; but it does not appear that in any of the numerous cases brought before the Prize Courts in America, the inadequacy of the force has been urged by those who would have been most interested in urging it against the legality of the seizure.⁷³

The New York prize court, as has been noted, was meticulous in its insistence that the blockade to be valid must be effective. Earl Russell was in error. In three cases in the New York prize court the effectiveness of the blockade was denied. The New York court did not consider notice of blockade as

⁷² Earl Russell to Lord Lyons, February 15, 1862, *Papers relating to the Blockade of the Ports of the Confederate States* (1862), North America, No. 8, no. 116; on reasons, cf. J. P. Baxter, *A. H. R.* (XXXIV), 12-13.

⁷³ Earl Russell to Mr. Mason, February 10, 1863, *Correspondence with Mr. Mason respecting the Blockade* . . . (1863), North America, No. 2, no. 13.

sufficient proof of its validity. The court's decision in the cases of the *Sarah Starr* (20) and the *Aigburth* (26), captured for violation of the blockade of North Carolina, explicitly stated this as follows:

These proofs manifest that on board of both vessels there was clear notice that the ports of Wilmington and Newbern, at the respective times these vessels departed therefrom, were claimed by the United States to be held under blockade. The documents in evidence show that the blockade had been authoritatively imposed on the 30th of April upon those ports. The capture of the *Sarah Starr*, on the day of her departure, (August 3,) by a United States ship-of-war, is *prima facie* proof that she was empowered to enforce the blockade. It is, however, imperfect evidence of the fact that she was a force adequate to maintain the blockade, or was stationed there for that purpose; because the accompanying testimony shows that the capturing vessel was at the time moving past the port, *en route* for Hampton roads, from Charleston, where she had been previously stationed. There is no direct evidence that any vessel was at the time stationed off North Carolina in maintenance of the blockade of those ports. The proofs are, that the *Aigburth* went out of the port of Newbern on the morning of the 28th of July, without any vessel being seen or known to be off that port supporting its blockade.⁷⁴

The government prosecutor was given opportunity to present further proof; it was not forthcoming. These prizes were indeed condemned on other grounds, namely, as enemy property. It may be noted, however, that these prizes, as well as the *Prince Leopold* (23),⁷⁵ the other case which turned on this issue, were all seized in the summer of 1861, during the first six months of the blockade.

In addition to the question of the effectiveness of the blockade, a whole set of legal problems was bound to arise in connection with the technical procedures employed in effecting the

⁷⁴ Blatchford, *Prize Cases*, pp. 86-87.

⁷⁵ *Ibid.*, p. 91.

actual capture. The rules were well understood; they are clearly stated, for example, by Judge Betts in his decision in the case of the schooner *Jane Campbell* (49) and her cargo:

The settled rule of prize courts is to require the captors to bring in, for examination before the judge or commissioners, the master and principal officers and some of the crew of the captured vessel, and the examination must be confined to them, unless special permission of the court is obtained to examine other. (1 Wheat. R., Appendix, Story, J., note, page 496.) Prize law, as administered in the English, American, and French tribunals, also inhibits, under the disallowance of the right of prize to captors, and the positive infliction of punishment by penalties and costs adjudged against them, any irregularities against the property seized or the captured crews, especially where the latter are neutral. (2 Wheat. R., Appendix, pp. 5, 6, 7, and notes and authorities there collected.) The general principle declared and enforced is that captors are held responsible for any gross irregularity or wanton impropriety towards the property seized or the ship's company arrested with it, and a satisfactory reason will be exacted for any deviation by the captors from the regular course of proceedings in prize cases. These doctrines are recognized and vigorously applied in the French ordinances, (Id. note,) and by mutual acquiescence among maritime nations, they supply the restraints which accompany the exercise of belligerent rights under the improved administration of prize law.⁷⁶

The procedure for making prizes and bringing them into the jurisdiction of the prize courts was fairly well standardized, but the ignorance, carelessness, or over-zealousness of naval officers seem to have caused some difficulty. Repeated careful instructions were issued to the officers on active blockade duty. Thus, Secretary Welles forwarded to the commanders of the respective blockading squadrons a copy of a letter written by E. Delafield Smith, United States District Attorney in New York, "respecting the evidence which is necessary in prize cases." To

⁷⁶ *Ibid.*, pp. 102-103.

it he added the injunction, "You will have these rules complied with."⁷⁷ On January 1, 1862, Secretary Welles distributed through the commanders of the blockading squadrons five hundred printed copies of instructions to prize masters.⁷⁸ Again, in May, detailed letters of instruction were sent by G. V. Fox, Assistant Secretary of the Navy, to the naval commanders. They were advised that they would "be held to a strict observance of the requirements of law in relation to captured vessels," and copies of articles 7, 8, and 9 of the first section of the "Act for the better government of the navy of the United States," approved April 23, 1800, were furnished them with additional explanations.⁷⁹ Nor did the flow of instructions cease; new statutes compelled revisions, and controversies with Great Britain were responsible for clarification of existing ones. In the latter category fall the instructions issued by Secretary Welles in August, 1862:

First. That you will exercise constant vigilance to prevent supplies of arms, munitions, and contraband of war from being conveyed to the insurgents, but that under no circumstances will you seize any vessel within the waters of a friendly nation.

Secondly. That, while diligently exercising the right of visitation on all suspected vessels, you are in no case authorized to chase and fire at a foreign vessel without showing your colors and giving her the customary preliminary notice of a desire to speak and visit her. . . .

You are specially informed that the fact that a suspicious vessel has been indicated to you as cruising in any limit which has been prescribed by this Department does not in any way authorize you to depart from the practice of the rules of

⁷⁷ Letter of Mr. Welles, September 14, 1861, to Commanders of Blockading Squadrons, enclosing copy of letter of E. D. Smith, September 12, 1861, MSS-XZ, 1861-1865, U. S. Navy Department Archives.

⁷⁸ Letter of Mr. Welles, January 1, 1862, to Commanders of Blockading Squadrons, *ibid.*

⁷⁹ Department Circular Letter of Instructions to Naval Commanders, May 14, 1862, quoted in Upton, *op. cit.*, pp. 490-491.

visitation, search, and capture prescribed by the law of nations.⁸⁰

In general outline the procedure was simple. When a suspected vessel had been stopped by a member of the blockading fleet, the first step was the examination of the ship's papers under the "rules of visitation, search, and capture prescribed by the law of nations." If in the opinion of the officer of the blockading vessel the ship was lawful prize, he took possession. The captured vessel was then sent in charge of a prize master and prize crew to a port where a district court existed. To the custody of the prize master were entrusted the ship's papers, log, and any other documents, including private letters that might be found aboard. Although it was essential, as will be explained later, that the officers and some at least of the crew appear before the officers of the court in which the case was to be adjudicated, they were not always conveyed on the prize itself. Their treatment ranged all the way from throwing them in irons, as in the case of the schooner *Louisa Agnes* (27)⁸¹, to the cavalier treatment accorded some of the men of the schooner *Jane Campbell* (49); the latter complained that they "were wrongfully removed from the vessel, without their consent, and were sent by other conveyances to Baltimore, and were there left on shore, without provision or means to reach New York, other than at their own expense."⁸²

The choice of port to which the prize was sent lay in the discretion of the commander of the vessel making the capture or, under certain circumstances, of his superior officer. When prizes were condemned, they were sold for the best price they could bring, and the net proceeds or a share of them were paid over to the captors. The blockade officer's choice, therefore, tended to be determined not only by immediate convenience, but by the possibility of good prices for the prize ship and cargo when

⁸⁰ Quoted in Moore, *op. cit.*, VII, 477-478.

⁸¹ Blatchford, *op. cit.*, p. 117.

⁸² *Ibid.*, p. 104.

sold at auction. It scarcely needed Secretary Welles' recommendation to the commander of the Gulf Squadron, early in the blockade, that the more valuable prizes be sent to New York, Boston, and Philadelphia—"a fair proportion to each of these ports." ⁸³

New York was the favorite port to which prize masters were instructed to sail their prizes. New York's maritime importance rested not only on its geographic position but also on the commercial possibilities of its market. Generally speaking, a ready market and good prices were more probable at auctions in New York than anywhere else on the Atlantic seaboard. As Mr. Albion so well states it:

By 1860 New York was handling two-thirds of all the nation's imports and one-third of its exports. The combined imports of Boston, Philadelphia, and Baltimore were less than New York's imports of textiles alone. . . . In the value of its imports and exports, as well as in the volume of shipping which entered and cleared, New York not only stood an easy first among American ports; but in all the world only London and Liverpool exceeded it. ⁸⁴

The advantages of New York outweighed the considerations that had led Cunard to choose Boston as the United States terminus for his line, and within eight years Cunarders were running to New York. "As was to be expected, this New York route soon overshadowed the old one by Boston and Halifax." ⁸⁵ Even the China clippers sailing out of Boston usually put into New York on their return trip to offer their wares for sale. ⁸⁶ It was not surprising that New York acted as a magnet for

⁸³ Letter of Mr. Welles, June 28, 1861, to Flag-Officer William Mervine, MSS-XZ 1861-1865, U. S. Navy Department Archives.

⁸⁴ Robert Greenhalgh Albion, *The Rise of New York Port* (New York, 1939), p. 386.

⁸⁵ *Ibid.*, p. 325.

⁸⁶ *Ibid.*, p. 200.

Union prizes. In the first two years of the war, 141 prizes out of 367 accounted for were sent to New York for adjudication; Philadelphia attracted 91, and Boston only 13.⁸⁷

By 1863, however, serious question was raised about alleged irregularities and excessive fees in the New York prize court. The resulting investigation culminated in a report to Congress clearing the New York prize court.⁸⁸ But even before the investigation had gotten under way, a tabulation by the Navy Department of the disposition of prize cases seemed to show that the costs of the New York court were substantially higher than those of any of the others.⁸⁹ From the fall of 1863 there was an extremely sharp decline in the number of cases handled by the New York court;⁹⁰ the Solicitor's report of the investigation came too late to accomplish a recrudescence of the primacy of the New York prize court. It is to be noted, however, that New York's North Atlantic compeers were not the chief beneficiaries. The newly opened court at New Orleans, and the conveniently located court at Key West, where costs were low, and which developed the practice of sending its more valuable con-

87 Letter of the Secretary of the Navy, February 18, 1863, called House Executive Document No. 73, 37th Cong., 2nd Sess. Printed in *Prize Cases in New York*. House Executive Document No. 74, 38th Cong., 1st Sess., p. 418 ff.

88 Letter of Edward Jordan, Solicitor of the Treasury, appointed to investigate alleged irregularities in the New York prize court. *Prize Cases in New York*, pp. 3-22.

89 Letter of the Secretary of the Navy, February 18, 1863, printed in *Prize Cases in New York*, pp. 419-422.

90 Up to February 1863, 141 out of 367 cases were brought to New York, cf. note 87 above. But according to the report of the Secretary of the Navy entitled *Prizes adjudicated from the Commencement of the Rebellion to May 1, 1868*, of the total of 1227 cases listed, New York is accredited with 167 cases, indicating only 26 cases were tried there after January 1863. My own calculations on the basis of the records of the New York court indicate there were 54 cases—but even that is a very sharp decline in terms of the total.

demned prizes to New York auction rooms, transacted most of the increase in business.⁹¹

The significance of the New York prize court transcends the number of cases it adjudicated. Taking the lead in the first two years of the blockade, under a judge who had had considerable experience in admiralty law and had shown much interest in prize, the court exerted its influence in the period when procedure was becoming formalized. Prize commissioners, district attorney, and counsel for the captors took the lead in formulating procedures and forms for the New York court and in giving advice to the other courts, when consulted. Furthermore, they lobbied for reform of the law, and Mr. Upton was thought to have been influential in the drafting of the law of March 25, 1862. The decisions of the New York court were considered of such importance that the State Department requested their compilation, and they were published in 1866 by Mr. Justice Blatchford, successor to Judge Betts. In the files of the District Court for the Southern District of New York are preserved the papers of the prize court for 1861-1865. They are fairly complete, and supplemented by the papers and the ledgers of the prize commissioners that have been deposited there, they not only furnish the sources for the study of prize procedures, but also illustrate the history of the blockade, the character of the South's trade, and its connections abroad.

⁹¹ New Orleans' total was 97 cases. Key West, which tried 78 cases in the period up to February 1, 1863, tried a total of 276 cases, according to the report of *Prizes adjudicated to May 1, 1863*. For sale of condemned prizes of Key West court in New York City, see testimony of Cyrus Cleveland in *Prize Cases in New York*, p. 286.

CHAPTER III

THE PROCEDURE OF THE NEW YORK PRIZE COURT

NEW YORK HARBOR was to see many a Confederate and British ship sail up the Bay under the command of its prize master. Once the prize had dropped anchor, usually off the Navy Yard, the prize master was under orders to go ashore and report the arrival of his prize to the judge of the district court or to the prize commissioners.¹ The prize having thus been brought within the jurisdiction of the court, the prize commissioners as agents appointed by the court were entrusted with the handling of the preliminaries of the prize case.

These officials, two in number, were appointed in May, 1861,² when the United States District Court for the Southern District of New York revised the prevailing prize rules and began again to function as a prize court.³ In fact, prize ships had already arrived in New York harbor before the court awoke

1 Prize Rule 2. Prize Rules of the United States District Court for the Southern District of New York, printed in Blatchford, *Prize Cases*, pp. 673-682.

The District Court for the Eastern District of New York was not created until after the Civil War.

2 Appointment of E. H. Owen and Henry H. Elliott as prize commissioners by the Court, May 23, 1861. MSS. *Rough Minutes of the United States District Court, Southern District of New York*, vol. 14, p. 622.

3 "The Court having at the present Term revised the Prize Rules heretofore in this Court, it is ordered that the following Rules be adopted as the Rules of this Court in prize causes, except when otherwise specially directed by the Court, or the Judge thereof, and that all Rules heretofore in use be rescinded." *Stated Rules and Standing Interrogatories in Prize Causes in the District Court of the Southern District of New York*, adopted May term, 1861, in file of prize commissioners' papers of the New York prize court.

The new rules varied only slightly from the rules in force in 1838, printed in Judge Betts' book on admiralty procedure, *op. cit.* The most significant change was the reduction of the term allowed for the return of the monition from twenty to ten days, or if served by publication, from fifteen to ten days, in Rule 44.

to the fact of the necessity of organizing to deal with them. The two prize commissioners were appointed on May 23, 1861, the day after the arrival of the prize schooner *George W. Smith* (1), and two days after the release of the *Argo* under instructions of the Navy Department.⁴ The *Argo* had been captured on May 14, 1861, at Hampton Roads and sent to New York for adjudication. Her release before the appointment of the New York prize commissioners explains why there is no record of her in the New York prize court papers. Prize Rule I stated:

There shall be issued, under the seal and authority of this court, commissions to such persons as the court shall think fit, appointing them severally commissioners to take examinations of witnesses in prize causes *in preparatorio*, on the standing interrogatories, which have been settled and adopted by this court, and all other depositions which they are empowered to require, and to discharge such other duties in relation to ships, or vessels, or property brought into this district, as prize, as shall be designated by the said commission, and the rules and orders of this court.⁵

It was to the prize commissioners that the prize master hastened to deliver the ship's papers and make his report. This report was in the form of an affidavit drawn up in the presence of a prize commissioner. In it the prize master identified himself, stated his rank and the ship to which he was attached, the conditions under which he had been appointed as prize master and by whom, and when and where the capture had been made. He also swore that he had turned over to the prize commissioner all the ship's papers which had been entrusted to him

in the same state and condition as they were delivered to him without any fraud, subduction or embezzlement and does not know nor does he believe that any of the documents, papers and writings so delivered to him are missing.

⁴ Letter from E. D. Smith to Secretary Welles, June 30, 1862. *Letters from Various Sources*, 1862, Sup. vol., U. S. Navy Department Archives.

⁵ Quoted in Blatchford, *op. cit.*, p. 673.

The papers were numbered and individually initialed by a prize commissioner, and were then itemized in the prize master's affidavit. The prize master's deposition concluded with the statement

that if at any time hereafter and before the final condemnation or acquittal of the property so captured as aforesaid any further or other papers relating to the said captured property shall be found or discovered to his knowledge, they shall also be delivered up to the prize commissioner or information thereof given to him or to the aforesaid prize commissioner.⁶

In the *Register* of the United States prize commissioners for New York during the Civil War the first entry made for every prize ship is a notation of the prize master's affidavit in respect to the ship's papers, together with a record of the total number of papers and other items thus turned over to the prize commissioner.⁷ This concluded the functions of the prize master.

The second entry in the *Register* usually reads: "Proceeded to and boarded the vessel lying off. . . . Found that bulk had not been broken and placed the seal of the prize commissioner on her hatches." This formula bears the initials of whichever prize commissioner had made the investigation, and the amount of expense involved is frequently noted. Sometimes, however, bulk had been broken; in such cases an inspection, somewhat cursory in character, was made, and information was sought as to why and how it had been done, before the seals were affixed.⁸ In

6 Practically every prize case includes in its file a prize master's affidavit drawn up under Prize Rules 8-10. In some few cases, however, the ship's papers were sent by the captor directly to an official of the court. The papers were sent to the marshal in the cases of the sloop *Annie* (108), the sloop *Sarah* (106), the sloop *New Eagle* (107); to the district attorney in the case of the schooner *Jesse J. Cox* (95); to the judge in the case of the schooner *Sarah and Caroline* (52).

7 MSS. *Prize Commissioners' Register*, 2 volumes, labelled A & B, cited hereafter as *P. C. R.*

8 Prize Rule 4 in Blatchford, *op. cit.*, p. 673.

other cases there was no cargo, as in the case of the privateer *Savannah* (12); then seals were affixed to the cabin door as well as to the hatches.⁹ In still other cases prize cargo was sent to New York in a chartered vessel; in that eventuality, either the cargo might be inspected aboard, or the captain was ordered to discharge the cargo at a specified warehouse, where it was to be checked later by a prize commissioner.¹⁰ Furthermore, the prize commissioner, in accordance with the rules of the court, was to "cause the said ship or vessel to be safely moored in sufficient depth of water, or in soft ground."¹¹ The papers reveal no special preoccupation with this point, but there is evidence that a watchman was placed aboard to protect the property¹², and the vessels were tied up at piers in Brooklyn.

Having thus taken possession of both ship and ship's papers, the prize commissioner proceeded to the next step in the prize case, the examination of witnesses. It had been the responsibility of the commander of the ship making the capture to see that a sufficient number of witnesses were sent to the port where the prize was to be libelled.¹³ Witnesses had to include members of the prize ship's company, usually the master and one or more of the other officers; stewards, seamen, passengers, even cabin-boys appeared as witnesses in various cases; every effort was made to produce the supercargo if there was one. On notification by the prize commissioner, these witnesses were produced by the district attorney.¹⁴ In some cases the captors had not realized the necessity of sending along witnesses and had sent

9 *P. C. R.*, vol. A, p. 12, under date of June 17, 1861.

10 *Ibid.*, pp. 88, 89, 92, 93, 94.

11 Prize Rule 3. Blatchford, *op. cit.*, p. 673.

12 *P. C. R.*, A, 72. March 5, 1862; Blatchford, *op. cit.*, p. 587.

13 Prize Rule 12. Blatchford, *op. cit.*, p. 675. This was the subject of frequent instructions sent out by the Navy Department, *cf.* Chapter II, pp. 47-49, *supra*.

14 The notation in *P. C. R.*, "notified the district attorney to produce the witnesses."

none;¹⁵ in other cases the ship's company had deserted before capture.¹⁶ Under any such circumstances, the prize commissioner applied to the court for special permission to examine witnesses from the vessel making the capture; these usually included the prize master and some of the prize crew, if they had been present at the time of the capture.¹⁷ In one case the master turned up later in order to make claim to the vessel; on motion of the district attorney the judge ordered the prize commissioner to take the deposition of this witness after the case had already begun.¹⁸ This was a very exceptional procedure, for normally the case was based in the main on the evidence presented by the ship's papers and on the depositions *in preparatorio*, all of which were supposed to be completed before the libel was filed.¹⁹

Examination of the witnesses *in preparatorio* by the prize commissioner was subject to very strict rules of procedure, laid down in Prize Rules 13-20. The Standing Interrogatories, forty-three in number, adopted by the court in the May term of 1861, were put to the witnesses under oath.²⁰ Attached to every deposition in answer to the forty-three standing interrogatories was the affidavit of the prize commissioner who took the deposition, stating:

that before such examination was commenced, the oath directed by the 17th Prize Rule was by me duly administered

15 Schooner *Falcon* (22), affidavit of E. H. Bearse, dated Aug. 20, 1861, stating he put passengers and crew on shore, because he did not know the necessity of sending witnesses.

16 Yacht *Gipsev* (65), affidavit of Thos. W. Johnson, Feb. 25, 1862.

17 Schooner *Falcon* (22), depositions in *preparatorio*; schooner *Zavalla* (77) depositions. Also Blatchford, *op. cit.*, *The Falcon*, p. 53 and *The Zavalla*, p. 173.

18 Schooner *Henry Middleton* (25), order to examine Capt. Barkley in *preparatorio*, Jan. 17, 1862. The prize was libelled Sept. 5, 1861.

19 Prize Rule 29. Blatchford, *op. cit.*, p. 679, also *ibid.*, *The Empress* (50), p. 147.

20 Prize Rule 17, *ibid.*, p. 676.

to the witness, and he was thereupon afterward examined separate and apart from the other witnesses; that such examination was begun, continued and finished on the same day, and was by me or in my presence, and in the presence of the said witness, and under my direction, reduced to writing, and the same having been by me carefully read to him, was by him subscribed in my presence at the close of such examination.²¹

All parties interested in the prize had the right to attend, or be represented by their agents, at the examination of witnesses before the commissioners, but they were not allowed

to interfere with the examination by putting questions or objecting to questions; nor to take notes of the proceedings before the commissioner, to be used otherwise than before the court. All objections to the regularity or legality of the proceedings of the commissioners must be made to the court.²²

Furthermore, the witnesses might "be kept from all communication with the parties, their agents, or counsel, during the examination".²³

With the sealing of the ship, the marking for identification of the ship's papers, and the taking of the depositions *in preparatorio* of the witnesses, the initial work of the prize commissioners was completed. They then notified the district attorney of their intention to file all the papers with the clerk of the district court.²⁴ That day or within a few days thereafter the notation was made in the *Prize Commissioner's Register*: "that day deposited all papers, logs, etc., with the clerk of the United States District Court."²⁵ These papers, ship's papers and depositions *in preparatorio*, were enclosed in a brown paper envelope

21 Printed at the end of every deposition *in preparatorio* in the files.

22 Prize Rule 13, Blatchford, *op. cit.*, p. 675.

23 Prize Rule 15, *ibid.*, p. 676.

24 Barque *Hiawatha* (2), *P. C. R.*, A, 1, June 12, 1861.

25 *Loc. cit.*

which was sealed by the prize commissioners before it was given to the clerk, and the name of the prize was written on the envelope. The envelope was opened only on the order of the court.²⁶ It is almost exclusively upon the evidence in these papers, the ship's papers and the depositions *in preparatorio*, that the prize case was tried. Only on rare occasions was further evidence allowed to be produced, and only if extraordinary circumstances warranted it.

The general rule of evidence in prize suits is, that, in the first instance, only the ship's papers and the preparatory examinations can be adduced, and the case must ordinarily be put to hearing on these proofs. (The *Vigilantia*, 1 Ch. Rob., 1.). But this rule is not inflexible, and, particularly in seizures for breach of blockade, the captors are permitted to put in affidavits contradicting the preparatory testimony as to the nearness of the captured vessel to the blockaded port, and the acts denoting an intent to evade the blockade. (The *Charlotte Christine*, 6 Ch. Rob., 101.)²⁷

The next step in prize procedure carried the case into its second stage, the trial. This step was the filing of the libel by the district attorney on behalf of the United States and the captors against the prize ship, its tackle, and cargo. Under the date of the filing of the libel, the first notation was made in the *Admiralty Docket*; thus the case was brought actively into court. The piloting of the government's case before the court was entrusted to the district attorney. It was the district attorney who prepared the libel.

The libel was in essence a petition to the court for the condemnation of the prize, and in form "ought to be a mere general allegation of prize."²⁸ It stated the reasons for the capture, based on the proclamation of the blockade, and the bringing of the prize into the jurisdiction of the court. It prayed for the

²⁶ Prize Rule 11, Blatchford, *op. cit.*, p. 675.

²⁷ The *Joseph H. Toone* (42), Blatchford, *op. cit.*, p. 230.

²⁸ The *Empress* (50), Blatchford, *op. cit.*, p. 146.

issuance of a monition and the citing of all persons concerned to answer the libel. Finally, it petitioned for the condemnation of the prize. The libel eventually became a standardized form and was printed. In fact, the manuscript libel employed in the first case filed in the New York court, that of the barque *Hiawatha* (2), was replaced in the case of the next ship, the *North Carolina* (3), libelled only four days later, by a printed libel.²⁹ Manuscript libels were, however, frequently used in the early cases, and a printed form was not used regularly until much later.³⁰

Upon the filing of the libel, a monition was issued by the clerk of the court, ordering the marshal to attach the prize and detain it in his custody until further order of the court, and also to notify all concerned to appear in court to answer the libel. The papers do not reveal in detail how the monition was served. Prize Rule 44 stipulates that if the prize was in port, it

shall be served in the same way as in the case of monitions issued on the instance side of the court of admiralty on seizures for forfeiture under the revenue laws. In case the property claimed as prize is not in port, then the monition is to be served on the parties in interest, their agent or proctor, if known to reside in the district, otherwise by publication daily in one of the newspapers of this city, for ten successive days preceding the return thereof.³¹

Story's notes say: "it is served usually by posting up a copy on the mast of a prize vessel, and at such other public places as the judge may direct."³² The monition carried the date returnable. According to Prize Rule 44, it was to be in ten days, but

²⁹ The Barque *Hiawatha* (2), libelled May 27, 1861; ship *North Carolina* (3), libelled May 31, 1861.

³⁰ Around March, 1862.

³¹ Blatchford, *op. cit.*, p. 680.

³² Joseph Story, *Notes on the Principles and Practice of Prize Courts with a Selection of Documents and Forms used in the High Court of Admiralty in England* (London, 1854), p. 50. This is known as Pratt's *Story* after its editor, Frederick T. Pratt.

the monitions frequently bear notation of extension of time.³³ When returned and filed, the monition bore the statement that the marshal had attached the ship, her tackle and cargo, and indicated the member of the marshal's staff who had been deputized to serve the papers of attachment. It also bore the notation, usually in pencil, of the name of the lawyer for the owners of the vessel and cargo, technically known as the claimants.

Filed on the same date as the monition, if not before, were the claims and answers of the claimants. These claims were accompanied by their test oaths or those of their agents; stating briefly the facts, and affirming the truth of the claim. "A valid interest must subsist in the claimant. A mere stranger will not be permitted to interpose a claim. . ."³⁴ As to the claim itself, Judge Betts said:

It is plain that the court, in adopting the prize rules regulating the practice of the court, (Rule 24, May term, 1861.) understood that the whole defense to be exhibited on the claim filed was simply a contestation of the allegations contained in the libel, (District Court Rule in Admiralty, 189,) and merely authorized the party to appear in court, and make opposition to a decree, on the allegations and proofs, on the first hearing.³⁵

The date of the hearing in court was determined by the date of the return of the monition, for this date determined the order in which prize cases were entered on the docket by the clerk of the court, and the "lists of the causes ready for hearing are to be constantly hung up in the clerk's office for public inspec-

³³ Monition in file of case of schooner *Joseph H. Toone* (42), dated Dec. 10, 1861; on back is written in pencil "Mr. Edwards asks for three weeks to answer and is granted it"; similarly on monition in schooner *Esilda* (43), Dec. 10, 1861.

³⁴ The *Empress* (50), Blatchford, *op. cit.*, p. 146; Prize Rule 42, *ibid.*, p. 680.

³⁵ The *Empress* (50), *ibid.*, p. 147.

tion.”³⁶ Usually there was only one hearing. Cases were, however, continued and further hearings or rehearings were held in certain contingencies, namely, where insufficient evidence to authorize condemnation had been presented to the court and the case for restitution was not clear, or where claimants petitioned for a rehearing on the basis of offering further proof and the court felt that the evidence from the papers had not been conclusive. As Upton stated it:

Farther proof is in no case a matter of right to either party, but always rests in the sound discretion of the court. It is only when the parties have conducted themselves honestly and with good faith, and the errors or deficiencies which exist in the proof are fairly referable to ignorance or honest mistake, that the indulgence is granted of allowing new evidence.

Where the master does not swear to, or give account of the property; where the shipment, though sworn to be on neutral account, does not specify the person; where the ship has been purchased in the enemy's country; where any loss or material suppression of papers has occurred; where the papers are defective, and the conduct of the parties, the nature of the voyage, or the nature of the original evidence creates a reasonable doubt of the proprietary interests, the legality of the trade, or the integrity of the transactions—in all such cases, farther proof becomes necessary, and will be permitted if the privilege of introducing it be not forfeited by the fraud or misconduct of the parties.³⁷

The first hearing “is limited to the inquiry, whether. . .the captured property is prize of war or not.”³⁸ The court, as already stated, based its decision on the evidence supplied by the ship's papers and the depositions *in preparatorio*, unless satisfactory reasons were shown for departing from this rule, for

The usage of the United States courts of prize is to allow further proof to be given by either party upon reasonable

³⁶ Prize Rule 27, *ibid.*, p. 678.

³⁷ Upton, *op. cit.*, pp. 426-427.

³⁸ *Barque Empress* (50), Blatchford, *op. cit.*, p. 147.

cause appearing in the progress of the suit for its reception, or on such cause being afterwards shown.³⁹

Prize Rule 46 of the New York court stated:

No permission will be granted to either party to introduce further proofs until after the hearing of the cause upon the proofs originally taken.⁴⁰

In cases where no claim and answer had been filed, the prize was condemned unless the court felt that the libellants had not offered sufficient and proper evidence of violation of the blockade or proof of enemy property. In such circumstances the court ordered that the case be continued and the libellants were given a year and a day to offer the necessary evidence for condemnation of the vessel and cargo.⁴¹ In these cases there was usually the additional complicating factor that no ship's papers had been found nor witnesses sent in to answer the standing interrogatories.⁴² However, the more usual prize case is that where the ship's papers and the depositions *in preparatorio* had been offered in evidence, and the claimants had filed their claims and answers to the libel. In these more normal cases, the case for condemnation was argued by both the district attorney and the counsel for captors. The district attorney represented the libellants, that is the United States and the officers and crews of the vessel or vessels that had made the capture, while the counsel for the captors acted exclusively for the latter. On the opposing side, the owners or their agents were represented by lawyers, more frequently called the proctors for the claimants.

The role of the counsel for the captors seems anomalous. He appeared quite early in these cases, representing the interest

³⁹ The *Sarah Starr* (20) and the *Aigburth* (26), *ibid.*, p. 88.

⁴⁰ *Ibid.*, p. 681.

⁴¹ Decree in the case of schooner *Actor* (79), filed July 18, 1862; also in the case of the cargo on ship *Thomas Watson* (111), filed July 29, 1862.

⁴² "Ship's papers lost when she was burned," in ink on back of libel of case of cargo on ship *Thomas Watson* (111), filed Jan. 8, 1862.

of the officers and crew of the vessel or vessels that had made the capture, as distinct from the interests of the United States, which fell exclusively to the province of the district attorney. In early cases his petition of intervention on behalf of the captors was filled at a rather late stage, but the bills of the counsel for the captors, filed with the respective cases, indicated that he had gone to work on the cases much earlier.⁴³ His bill is an enumeration of the services he rendered. He examined the prize master's affidavit, the ship's papers, and other books and documents taken with the prize, as well as the testimony *in preparatorio*; he drew up the petition of intervention on behalf of the captors; he attended at court on the various motions; he prepared oral arguments and written briefs for hearings; he attended on settlement of the decree and its entry, and on any subsequent proceedings, including the settlement of costs.

The question that arises is what relation did he bear to the district attorney, who was apparently discharging the same duties—the prosecution of the case before the court with all the necessary preparations. It was the district attorney who prepared the libel, and initiated court action. Both the district attorney and the counsel for the captors prepared briefs and argued at the hearings on behalf of their clients, the United States and the captors. The district attorney, however, was considered as representing both the United States and the captors; the counsel for the captors, the captors alone.⁴⁴ The district attorney was considered by the court to be *dominus liti*. In the case of the mailbags on the *Peterhoff* (151), when a difference of

43 *Barque Hiawatha* (2), libelled May 27, 1861. Upton's petition of intervention on behalf of the captors was dated Sept. 2, 1861. However, Judge Betts' decision mentioned Mr. Upton as participating in the discussions on behalf of the captors in the hearings held in August, 1861. Blatchford, *op. cit.*, p. 4.

44 Order of Judge Betts on the motion to deliver up the mail bags, April 22, 1863, *The British Steamship "Peterhoff"*. A report of her seizure by the United States Cruiser, "*Vanderbilt*" and the subsequent proceedings in the United States Prize Court of New York (New York, 1863), pp. 29-30, filed with the case of the steamer *Peterhoff* (151).

opinion arose between the district attorney and the counsel for the captors as to the best procedure, the court decided that the district attorney was by law official master of suits prosecuted by the United States in the prize court, and had "thereby authority, at his discretion, to offer to or withhold from the consideration of the court any particular of testimony relative to a prize suit in prosecution in court,"⁴⁵ despite the opposition of the counsel for the captors.

It thus appears that the work of the counsel for the captors was to render assistance to the district attorney in the prosecution of the case, and to act as the especial protector of the rights of the captors. The relationship was so defined in the statute of July 17, 1862, which empowered the Secretary of the Navy to employ counsel for the captors when captors did not themselves employ one.⁴⁶ Under this act, the Secretary of the Navy, on September 6, 1862, authorized Mr. Upton to act as counsel for the captors in the New York prize court.⁴⁷ Mr. Upton had been serving prior to that date as private counsel appointed by various commanders of blockading vessels making captures to represent their interests and those of their crews.

By the act of March 3, 1863, the position of the counsel for the captors underwent further modification; thenceforth his services were to be restricted to representing the captors "having interest conflicting with those of the United States and therefore proper to be represented by separate counsel from those representing the United States,"⁴⁸ that is, the district attorney. This interpretation was confirmed by the statute of June 30, 1864.⁴⁹ As a result of these statutory changes, a coun-

⁴⁵ The *Peterhoff* (151), Blatchford, *op. cit.*, 468.

⁴⁶ 12 Stat. 608, sec. 12.

⁴⁷ MSS. *General Letter Book*, vol. 69, p. 283, United States Navy Department Archives.

⁴⁸ 12 Stat. 760, sec. 4.

⁴⁹ 13 Stat. 306, sec. 23. The copy of the act consulted was the copy in the prize commissioners' files, certified by the chief clerk of the Department of State, Aug. 10, 1864, as a true copy.

sel for the captors appeared in only eight cases libeled after March 30, 1863, out of a total of nearly forty, whereas prior to that date, in almost every case the interests of the captors were protected by their own counsel as well as by the United States district attorney.

During the trial the prize commissioners continued to play an important role. In the cases tried during the first year their role was chiefly passive, but in later years it became increasingly more active as their functions became more clearly defined. The question of the custody of the prize caused considerable uncertainty and required clarification. The prize commissioner at Key West raised the question of which official of the court held custody of the prize in a letter to the New York prize commissioner dated as late as August 2, 1861. The New York prize commissioner's notes for his answer are written in the margin of the letter. They indicated that his opinion then was that the prize commissioner took custody of the prize and that there was no necessity of its going into the hands of the marshal at all; it might remain with the prize commissioner until condemned and might be sold by him if the court so ordered.⁵⁰ In Philadelphia, on the other hand, the prize commissioner reported that on the release of the prize master the marshal took possession.⁵¹ The actual practice in New York appears to have been, with rare exceptions, an intermediate one, which was the one later confirmed by the Act of March 25, 1862. This act provided that the marshal was to take possession of the prize once the libel had been filed and the monition had been issued.⁵² The prize commissioner retained custody of the prize merely during the time between the release of the prize master and the taking possession by the marshal.

⁵⁰ Letter of George D. Allen to the New York prize commissioners filed under the date of receipt, Aug. 21, 1861, in manuscript correspondence of the New York prize commissioners.

⁵¹ Letter of Henry Flanders, prize commissioner in Philadelphia, filed under date of March 27, 1862, *ibid.*

⁵² 12 Stat. 374, sec. 1.

When he did have custody, the marshal was responsible for the prize and was liable for any loss of prize property,⁵³ but the responsibility for the condition of the prize remained the prize commissioners'. Pending final adjudication of the case, the prize commissioners were to examine the condition of the prize and ask for an interlocutory sale if the prize was "perishing" or deteriorating in value. The prize commissioners' report on the condition of the prize was usually accompanied by an expert appraiser's affidavit attesting, also, to the condition of the prize. If the court was convinced by the evidence presented by the prize commissioners, it ordered an interlocutory sale by the United States marshal, and the proceeds of such sale were deposited in the registry of the court to await the order of the court. It is quite evident that as the blockade progressed, much greater emphasis was placed on the interlocutory sale. Prize Rule 26 of the New York prize court allowed the captors to ask for it when the goods were "perishing." The statute of March 25, 1862, enjoined the prize commissioner to examine the cargo from time to time pending adjudication and ask for an interlocutory sale if the goods were "perishing or perishable or deteriorating in value."⁵⁴ A year later, the statute of March 3, 1863, authorized sale not only if the prize was found to be deteriorating, but if the costs of storage and fees were disproportionate to the value and were therefore likely to eat up the proceeds of final sale.⁵⁵

Interlocutory sales became the rule rather than the exception, and in the files of the court papers reports of the prize commissioners on the condition of the prize and recommendations of interlocutory sale under the provisions of the Act of March 25, 1862, became standard procedure. The provisions of

⁵³ *Prize Cases in New York*, p. 5; the marshal was held responsible for the loss of prize property in his custody from the Barque *Hiaiwatha* (2).

⁵⁴ 12 Stat. 374, sec. 1.

⁵⁵ 12 Stat. 759, sec. 1; previous to this, counsel for the claimants had repeatedly opposed interlocutory sales, cf. schooner *Aigburth* (26), Jan. 14, 1862, and brig *Sarah Starr* (20), Feb. 11, 1862.

this act in regard to interlocutory sale were further clarified by Judge Nelson of the New York circuit court on May 5, 1862. On the basis of Judge Nelson's interpretations, the power of the prize commissioners to recommend interlocutory sale was construed as joint and as requiring the concurrence of both the prize commissioners in its exercise. The sale was to be effected by the marshal, under the superintendence and direction of the prize commissioners. But prior to the sale, vessel and cargo were to be appraised by the prize commissioners and by experts named by them, and this appraisal was to be filed with the court. The prize commissioners and the marshal were to make an inventory of the cargo at the time of appraisal, based on the bills of lading. Cargo was to be appraised and sold, not by bulk but in lots; the goods listed on each bill of lading constituting a separate unit were to be separated, appraised, and sold separately. The marshal was to receive the purchase money, make a proper return of the sales, and pay the gross funds into the registry of the court.

All reasonable and proper claims and charges for pilotage, towage, wharfage, storage, insurance, and other expenses incident to the bringing in and safe custody and sale of the property captured as prize shall be a charge upon the same, and *having been audited and allowed by the court*, shall, in the event of a decree of condemnation or of restitution on payment of costs, be paid out of the proceeds of any sales of the property, final or interlocutory, in the custody of the court.⁵⁶

The role of the prize commissioners was essentially supervisory. They were responsible for the condition of the prize; they were to prevent deterioration in its value, through disintegration or poor care, or through an excessively long period of storage causing excessive costs; and to them was also en-

⁵⁶ The *Hiawatha* (2), Blatchford, *op. cit.*, p. 634; the official copy of the modified sales procedure with proof of service on the marshal and Elliott, one of the prize commissioners, is in the files of the schooner *Major Barbour* (68), filed under date of May 6, 1862.

trusted the superintendence of the sale, whether interlocutory or final. This implied a responsibility for receiving the best possible price for prize goods. In fact, according to Judge Nelson,

They represent all parties in interest, and it is their duty to see that the property is not sacrificed at the sale. The relation they hold to the property is not unlike that of a private party in sales of this description.⁵⁷

To aid them in the task of securing good prices at the sale, and in accord with the opinion of Judge Nelson, the prize commissioners appointed expert appraisers. Ships and cargoes were usually appraised by at least two appraisers;⁵⁸ their appraisals and affidavits were attached to the report of the prize commissioner on the value of the cargo or vessel. The function of appraisers of prize goods was most important and was not confined to estimating the prices that might be realized by the sale of prize goods. In certain circumstances their appraisals exactly determined the amount that was received for prize goods.

Sometimes before final decree, prize cargo or vessel was delivered to the government on the basis of an appraisal⁵⁹ or to

⁵⁷ Blatchford, *op. cit.*, p. 634.

⁵⁸ In the early cases only one appraiser was used. *Cf.* schooner *Crenshaw* (6), order of appointment filed June 17, 1861; bark *Winifred* (8), July 13, 1861; schooner *Lynchburg* (9), June 17, 1861. In the latter case, after goods had been delivered on bond on the basis of the appraisal, the appraisal was discovered to be incorrect. The goods were worth twice the appraisal value. New appraisals were ordered, July 17, 1861. The court ordered the raising of the bonds, Sept. 13, 1861, but no attention was paid to the court order. However, the final outcome of this case was the restoration of part of the cargo to the claimants, and thus no loss ensued to the captors. There are other cases of low appraisals on the part of the sole appraiser. *Cf.* cargo on barque *Hiawatha* (2); the brig *Sarah Starr* (20).

⁵⁹ Steamer *Memphis* (116), order of appraisement and delivery to the government, Aug. 13, 1862; schooner *Stephen Hart* (54), copy of appraisal of goods taken by the Navy, Quartermaster and Ordnance, March 19, 1862, also, March 25, 1862.

the claimant on bond.⁶⁰ In such cases appraisers were appointed not by the prize commissioners but by the court, usually on the nomination of one side with the consent of the other. In these cases the files contain the order of appointment of the appraiser, indicating on whose motion the order was made, the oath of the appraiser, and the appraisal. The Navy Department usually recommended naval men, such as Benjamin F. Delano and B. F. Garvin, who were connected with the New York Navy Yard in Brooklyn, as appraisers of prize vessels which the Navy wished to take.⁶¹ In some cases, where the commander of the capturing vessel thought the prize ship to be unseaworthy and therefore unable to make the sea voyage north, but satisfactory for local service, he appointed a naval board of survey to appraise the vessel and the government took the vessel at this appraisal.⁶² Frequently the cargo was sent north on another ship, and the prize master of the cargo was entrusted with the ship's papers and the appraisal of the naval board. In any case the ship's papers were sent with a prize master to a district court in order to secure the legal condemnation of the prize. The amount of the appraisal was deposited with the Treasury to await the determination of the suit.

Under certain conditions delivery of the prize ship and cargo to the claimants on bail was allowed. Prize Rule 25 provided that

by consent of captor and claimant, or upon attestation exhibited upon the part of the claimant only, without consent of the captor, that the cargo or part thereof is perishing or perishable, the claimant, specifying the quantity and quality of the cargo,

60 Schooner *Mary Clinton* (15), order for delivery of cargo on bonds of claimant, July 26, 1861, and July 31, 1861.

61 Benjamin F. Delano was United States naval constructor, and B. F. Garvin, chief engineer, United States Navy. Cf. copies of letters of Secretary Welles in file of steamer *Stettin* (102), July 8, 1862, and in file of steamer *Memphis* (116), Aug. 14, 1862.

62 Schooner *Sarah and Caroline* (52), ship's papers A, 1; appraisals of schooner *Delight* (57), sloop *Advocate* (63), sloop *Osceola* (56), sloop *Express* (64), included in ship's papers of sloop *Osceola* (56).

may have the same delivered to him, on giving bail to answer the value thereof if condemned. . . . If the parties cannot agree upon the value of the cargo, a decree or commission of appraisement may issue from the court to ascertain the value.⁶³

However, in several prize suits, delivery of the prize vessels and cargo to the claimants on bail occurred where there was no allegation that the goods were "perishing."⁶⁴ This practice was strongly condemned by Upton as "utterly subversive of the policy of the law of maritime capture"⁶⁵ and defeating the whole purpose of the capture. In one case the appraiser valued the cargo at less than half its value. The error was discovered, but by that time the cargo had been sold and it was extremely difficult to increase the bail bonds.⁶⁶ The act of 1864 finally did away with this procedure.⁶⁷

If no interlocutory order for sale had been issued and the prize had not been released on appraisal or bond, the sale of prize property awaited final decision of condemnation. There was, however, still the alternative possibility of a decree of restoration. This indicated that insufficient evidence of the violation of the blockade by a neutral vessel had been presented, for all enemy ships were condemned on grounds of enemy property;⁶⁸ neutral goods were also released if no violation of block-

⁶³ Blatchford, *op. cit.*, p. 678.

⁶⁴ The bark *Sally Magee* (16), schooner *Forest King* (14), bark *Winifred* (8), schooner *Lynchburg* (9). "These proceedings were not based upon allegations of that character." Blatchford, *op. cit.*, p. 597.

⁶⁵ Upton, *op. cit.*, pp. 457.

⁶⁶ Cf. note 58 *supra*.

⁶⁷ 13 Stat. 306, sec. 26.

⁶⁸ The schooner *Crenshaw* (6); Mr. E. Delafield Smith, district attorney for New York, in his report to the Navy Department wrote: "This is the test cause of seizures at sea, of property owned in the Rebellious States, upon the single ground of such ownership. All similar causes in which there have been appearances and appeals await the final determination of this." *Reports of Prize Cases in New York*, 2 vols., I, 5, U. S. Navy Department Archives. The decree of condemnation was affirmed on appeal to the circuit court, Nov. 20, 1861, and by the Supreme Court on appeal. (2 Black, 635.)

ade was proven.⁶⁹ The decree of restoration might take any one of three forms; 1) restoration with costs or damages to the claimants,⁷⁰ 2) restoration on payment of costs by the claimants,⁷¹ and 3) restoration without costs.⁷² The question of costs was determined on the basis of the adequacy of the evidence presented by the libellants in justification of their capture of the prize and their plea for its condemnation. Where no justification for the capture was shown in the evidence, the prize was released with costs or damages awarded to the claimants; where reasonable cause for the seizure was shown, i. e., "where there were circumstances sufficient to warrant suspicion, though not sufficient to warrant condemnation,"⁷³ the decree was restoration on payment of costs by the claimants; and where only probable cause for capture was proven, restoration without costs resulted.

The decree of restoration without costs caused the officials of the court much difficulty. Who was to pay the prize commissioners, the marshal, the district attorney, and the counsel for the captors for their services, as well as meet the bills for the care and custody of the prize? In 1862, Upton, in Washington, attended House and Senate committee hearings on a bill which was to clarify existing prize procedure and resolve the difficulties that had cropped up. While there, he wrote to Elliott, a prize commissioner in New York, that the payment of proctors and commissioners when restitution without costs was ordered was the most difficult point, "but I think I shall succeed in some way of providing for it—but the truth is, there is no case in which restitution should be decreed without the payment of such costs."⁷⁴ Mr. Upton was not successful. It was

69 Schooner *Velasco* (18), decree of Oct. 25, 1861.

70 Schooner *Glen* (169), Blatchford, *op. cit.*, p. 375.

71 Schooner *Hannah M. Johnson* (10), *ibid.*, p. 12.

72 Schooner *Jane Campbell* (49), *ibid.*, p. 101.

73 Moore, *op. cit.*, VII, 598.

74 Letter of F. H. Upton to Henry H. Elliott. Manuscript correspondence of prize commissioners, filed under date of Jan. 19, 1861.

not until a year later that it was provided in the Act of March 3, 1863, that in cases where restoration without costs was decreed, costs were to be charged to a fund for defraying expenses of suits to which the United States was a party.⁷⁵ Previous to that date, in a decision handed down in the circuit court on May 19, 1862, the claimant was not held responsible

for the costs and expenses attending the seizure, detention, and safe custody of the vessel seized by the government, unless there is a decree of condemnation or of restitution on payment of costs. And such would have been the rule in the absence of any statute regulation. . . . If the government be the adverse party . . . application must be made by all officers, or other persons who may have incurred expenses, or been subject to charges, at the instance of the government, in the course of the proceedings.⁷⁶

Nor did even a decree of condemnation necessarily mean the immediate sale of prize property, for the claimants had the right of appeal, and where there was any possible chance, the right of appeal was exercised. Until the law was changed in March 3, 1863, appeals were made to the circuit court, under Prize Rule 51. This provided that the appeal

must be made within ten days from the time the decree appealed from is entered, otherwise the party entitled to the decree may proceed to have it executed. No appeal shall stay the execution of a decree, unless the party, at the time of entering the appeal, gives a stipulation, with two sureties, to be approved by the clerk, in the sum of two hundred and fifty dollars, to pay all costs and damages that may be awarded against him, and to prosecute the appeal to effect.⁷⁷

The object of Rule 52 was to prevent unreasonable delay, by

⁷⁵ 12 Stat. 759, sec. 1.

⁷⁶ The *Aigburth* (26), and the *Sarah Starr* (20), Blatchford, *op. cit.*, p. 636.

⁷⁷ *Ibid.*, p. 681-682.

allowing "the other party to move the court for leave to execute the decree, notwithstanding the appeal," if the party appealing was guilty of undue procrastination in preparing the case.⁷⁸ After March 3, 1863, appeals from a district court went direct to the Supreme Court in cases where the amount involved exceeded two thousand dollars, or in other cases in which the district judge certified the question at issue as difficult. It was required that appeal be made within thirty days of the rendering of the decision.⁷⁹

In cases of condemnation where the clerk of the court certified that no appeal had been taken within the allotted time, and the property had not already been sold under an interlocutory order, a *venditioni exponas*, or order for sale, was issued to the marshal, and the machinery began to function for the execution of the sale.

The conditions of the sale under a decree of condemnation did not differ from those under an interlocutory decree.⁸⁰ First, appraisals were made of the value of the prize. Appraisals were filed either by the prize commissioners or by appraisers appointed directly by the court. In the former case, in the prize commissioners' report to the court on the value of the prize, an appraisers' report was included together with the gauger's or weigher's report of items requiring such special treatment.⁸¹ Cargoes were appraised, item by item, in accordance with the bills of lading or the manifest.⁸²

The sale, itself, was carried out under the orders and direction of the marshal, subject, however, to the "superintend-

⁷⁸ *Loc. cit.*, p. 682.

⁷⁹ 12 Stat. 759, secs. 7 & 8.

⁸⁰ *Cf.* pp. 67-68, *supra*.

⁸¹ Prize Commissioners' report in file of schooner *Henry Middleton* (25), June 24, 1862.

⁸² Appraisers' reports in file of ship *Cheshire* (48), dated March 6, 1862, of schooner *Stephen Hart* (54), under dates of March 19 and 25, 1862, of brig *Robert Bruce* (130), March 22, 1863.

ence" of the prize commissioners,⁸³ and the *Prize Commissioners' Register* usually indicates which prize commissioner attended the sale.⁸⁴ In a very few early cases the sale was conducted by a prize commissioner without the assistance of the marshal.⁸⁵

Notice of the pending sale was given by advertisement in the New York papers. Receipted bills for advertisement of sales in the *Times*, *Post*, *Commercial Advertiser*, *Express*, and *Journal of Commerce* have been found appended to the marshal's bill. Sales were for cash, a percentage had to be paid at the time of the sale, the balance on the next business day at the office of the auctioneer. No reclamations were to be permitted; and from the termination of the sale, the responsibility of the authorities for the property ceased. These terms were announced by the auctioneer at the beginning of the sale and appear also on the cover or first page of the printed catalogues preserved in the files.⁸⁶

In the early years the proceeds of the sale were turned over by the auctioneer to the marshal, but only after subtracting his

⁸³ Blatchford, *op. cit.*, 635; in certain cases where the prices bid seemed too low, the prize commissioner postponed the sale. Schooner *Prince Leopold* (23), "sale postponed in consequence of an apparent combination of dealers in turpentine," Sept. 2, 1863, *P. C. R.*, A, p. 266. Similarly, the sale of 57 hhds of molasses adjourned, "the price being materially less than the appraisal," *ibid.*, A, p. 26, Jan. 30, 1862.

⁸⁴ *P. C. R.*, A, p. 3, Aug. 1, 1863; A, p. 11, May 29, 1862.

⁸⁵ Bark *Pioneer* (5), *P. C. R.*, A, p. 45, Nov. 10, 1861; brig *Sarah Starr* (20), *P. C. R.*, A, p. 20, Feb. 24, 1862 (cargo); schooner *Aigburth* (26), *P. C. R.*, A, p. 26, Jan. 14, 1862; schooner *Louisa Agnes* (27), prize com. report on sale, filed March 13, 1862. See ruling of Judge Betts in the case of the *Pioneer* (5), Blatchford, *op. cit.*, p. 61 for explanation of procedure.

⁸⁶ Auctioneers' catalogues in file of barque *Springbok* (143), schooner *Water Witch* (135), steamer *Scotia* (134), schooner *Revere* (129). Reclamations were, however, made in certain cases and that was the basis of the most serious charges against the New York prize court in the investigations. See Chapter IV below, also papers in case of cargo on schooner *Sarah A. Falconer* (79), Sept. 15, 1863; also papers in case of cotton on schooner *Napoleon* (82), Aug. 20, 1862.

own commissions.⁸⁷ The marshal deposited the balance with the court.⁸⁸ In the few cases before the Act of March 25, 1862, where the prize commissioners conducted the sale, they paid the bills for storage and appraisal, and deposited the remaining proceeds with the clerk of the court. After the passage by Congress of the Act of July 17, 1862, which provided that the gross proceeds rather than the net were to be deposited with the assistant treasurer nearest the court, and that the various bills taxed by the court were to be paid out of the Treasury, the marshal paid the money into the Treasury; the court ceased to serve as a repository of the funds.⁸⁹

Against the proceeds were charged the costs of the case. These were of two kinds: charges for services rendered in connection with the adjudication of the case and charges incidental to the care and disposal of prize property.

In the first category were the fees of the district attorney, counsel for the captors, and clerk of the court. In the second, the bills for storage, pilotage, towage, insurance, care of cargo, appraisal, and for auctioning the prize and cargo—all of them subject to approval by the marshal and subject to the marshal's commission on his disbursements. The bill of the prize commissioners, by the very nature of their work and responsibilities, spanned both categories; charges for the examination of witnesses *in preparatorio* and the arranging and numbering of ship's papers might be assigned to the first, while charges for the inspection of prize cargo and vessel and superintendence of their disposition belonged to the second. As Judge Betts said:

The duties prescribed are partly legal, partly mercantile, and in part miscellaneous, and appertaining to the skill and ex-

⁸⁷ *Prize Cases in New York*, p. 20.

⁸⁸ Prize Rule 28 directed the investment of the money. Blatchford, *op. cit.*, p. 680. In the files of some of the cases are court orders for the money to be invested in $7\frac{3}{4}$ government bonds. Schooner *Shark* (24), under date of Dec. 31, 1861; brig *Henry C. Brooks* (28), Jan. 10, 1862.

⁸⁹ 12 Stat. 608, sec. 12.

perience of persons conversant with mercantile and general business transactions.⁹⁰

The fees of the various officers of the court, as well as that of the counsel for the captors, were fixed by the court. No tariff of fees was provided by legislation. The statute of March 25, 1862, simply provided that the rates of compensation for prize commissioners, district attorney, and counsel for captors were to be determined by the court and to be paid out of the proceeds secured by disposal of the prize.⁹¹ The various officials accordingly submitted to Judge Betts a proposed tariff of fees for their respective services.⁹²

In August, 1862, Judge Betts ruled that since no specific tariff of fees had been set by statute, he would be guided by the costs fixed by statute for similar services performed in admiralty cases in instance, or in accordance with established rules and usages of the court for like services; he expressed his opposition to the method of compensating any of the officers of the court for their services in prize suits by payment of a percentage of the value of property coming officially into their possession, unless expressly authorized by law or on the written assent of the parties whose interests were affected.⁹³ Accordingly, the district attorney and the clerk charged standard fees for services actually rendered.⁹⁴ Their bills were not allowed until taxed by the court in each case. The Act of July 17, 1862, limited the annual official income of the district attorney to a maximum of \$6,000 and stipulated that any amount beyond this sum was to be turned over to the Treasury.⁹⁵ The

⁹⁰ Blatchford, *op. cit.*, p. 589.

⁹¹ 12 Stat. 374, sec. 3.

⁹² Blatchford, *op. cit.*, p. 206.

⁹³ *Loc. cit.*

⁹⁴ Based on the law of February 26, 1853, 10 Stat. 161, sec. 1.

⁹⁵ 12 Stat. 608, sec. 12. This was interpreted by the district attorney to mean \$6,000, from prize cases in addition to \$6,000 annual salary. On May

Act of June 30, 1864, raised the district attorney's and the marshal's maximum compensation but with the proviso that they were not to retain more than \$3,000 in fees from prize cases above their nominal salaries of \$6,000.⁹⁶

In the case of the fees for the counsel for captors, Judge Betts took no action during the brief period when the matter was at his discretion.⁹⁷ Although the Act of March 25, 1862, had left the matter to the jurisdiction of the court, the Act of July 17, 1862, shifted this responsibility to the Secretary of the Navy, who was

authorized to appoint an agent, or to employ counsel when the captors do not employ counsel themselves, in any case in which he may consider it necessary, to assist the district attorney and protect the interest of the captors, with such compensation as he may think just and reasonable.⁹⁸

Under the terms of this act, Secretary Welles appointed Upton as counsel for captors for the New York court, and proposed rates of compensation varying with the amount involved. Where the amount deposited in the Treasury amounted to \$10,000 or more, there was to be a fixed fee of \$200 plus a commission of one per cent but not to exceed \$1,000; thus the maximum fee was not to exceed \$1,200. Where the proceeds were less than \$10,000, the fee proposed was \$100, plus a commission of two per cent on the amount deposited. In any case fees were to be contingent on condemnation.⁹⁹ In proposing this schedule of fees, Mr. Welles had been guided by Mr. Upton, who had already reluctantly submitted his idea of a

20, 1863, the district attorney reported that he had been informed by the Accounting Department at Washington that his total salary was restricted to \$6,000, including costs in prize cases. *Prize Cases in New York*, p. 328.

⁹⁶ 13 Stat. 306, sec. 21.

⁹⁷ Blatchford, *op. cit.*, pp. 101, 607.

⁹⁸ 12 Stat. 608, sec. 12.

⁹⁹ Letter of September 6, 1862. *General Letter Book*, vol. 69, p. 288. MSS. U. S. Navy Department Archives.

fair amount of compensation in a letter to Mr. Elliott, prize commissioner in New York. Elliott, in urging upon Secretary Welles the appointment of Upton for the post of counsel for captors in New York, had forwarded to the Secretary Upton's letter containing the proposed schedule of fees.¹⁰⁰ The printed form used for the bills of the counsel for the captors called for an itemized statement, with fees for specific services rendered. The items, however, added up to the total already arrived at on the fee and percentage basis on the amount deposited in the Treasury.

This arrangement was soon upset. The Act of March 3, 1863, repealed the section in the Act of July 17, 1862, which had provided for the appointment of counsel for captors by the Secretary of the Navy. Henceforth, counsel for captors were to be employed only in cases where the interests of the captors differed or were in conflict with those of the United States.¹⁰¹ In the few subsequent cases in which counsel for captors were employed, their compensation was variously calculated.¹⁰²

The second category of charges on the proceeds, those connected with the servicing and sale of the prize, were subject to the marshal, with the exception of those cases in which the prize commissioners sold the prize under special order of the court. The expenses of pilotage, wharfage, towage, insurance, etc., in the Act of March 25, 1862, were specified as charges upon the prize, or to be paid by the claimant in case of restitution on payment of costs.¹⁰³ The marshal himself was allowed fees computed in accordance with regular admiralty procedure, based partially on the amount realized from the sale of the

100 Letter No. 78, August 30, 1862. Mr. Elliott to Mr. Welles. *Miscellaneous Prize Matters, 1861-1871*. MSS. U. S. Navy Department Archives.

101 12 Stat. 760, sec. 4.

102 The fee for counsel for captors in the case of the steamer *Merrimac* (173) was \$3,047, calculated on the basis of 1½ per cent of gross proceeds; cf. papers under date of Feb. 18, 1864. In the case of the steamer *Annie* (184), the fee was \$7,697.51.

103 12 Stat. 374, sec. 1.

prize and partially on the amount involved in the administration of the property while in his custody.¹⁰⁴ He was allowed a commission on the sale of prize goods at the rate of $2\frac{1}{2}$ per cent on the first \$500 and $1\frac{1}{4}$ per cent on the balance of the gross proceeds of the sale, plus a commission of 2 per cent on disbursements. Disbursements included payments for storage, wharfage, appraisal, towage, insurance, advertising, auctioneer's services, etc. To the marshal's bill of costs in the files are pinned the original bills for which he claimed disbursements. The statute of July 17, 1862, provided that in the case of fees, charges, and allowances claimed in each case of prize, the marshal was to issue an affidavit that these had been actually and necessarily incurred, and the district attorney was to attend on the settlement and allowance of bills.¹⁰⁵ This act also limited the annual official income of the marshal to \$6,000, stipulating that any amounts received above this sum were to be turned over to the Treasury.¹⁰⁶ The Act of June 30, 1864, raised the marshal's salary, allowing him to retain an extra \$3,000 from prize fees, while maintaining the \$6,000 salary for all other activities.¹⁰⁷ His commissions were also changed by reducing the commission on sale of prize vessels to $\frac{1}{4}$ per cent and on all other prize goods to $\frac{1}{2}$ per cent.¹⁰⁸

Meanwhile by March 3, 1863, Congress had taken cognizance of certain of the prize fees and of the auctioneer's fee in particular. It had restricted the auctioneer of prize goods to a compensation not in excess of $1\frac{1}{4}$ per cent of the gross proceeds of the sale.¹⁰⁹ The auctioneer's charge was further restricted in the following year. It was then stipulated that his

104 Admiralty Rules 49-51, printed in E. C. Benedict, *The American Admiralty, Its Jurisdiction and Practice* (New York, 1850), p. 367.

105 12 Stat. 607, sec. 12.

106 *Loc. cit.*

107 13 Stat. 306, sec. 19.

108 *Loc. cit.*

109 12 Stat. 759, sec. 3.

fee for the sale of vessels realizing more than \$10,000 was not to exceed $\frac{1}{2}$ per cent and on other prize property 1 per cent. The scale was to be established by the Secretary of the Navy, and if it were not done, the compensation of the auctioneer was to be determined by the court.¹¹⁰

Behind this legislation lay an interesting story. In New York the question of the auctioneer's commission precipitated an investigation into the conduct of the prize court of New York. The auctioneer's fee had been $2\frac{1}{2}$ per cent of the gross proceeds of the sale, the recognized auctioneer's fee in commercial practice at the time.¹¹¹ However, the work of the auctioneer in prize cases differed substantially from his normal mercantile activities. In prize cases he merely called the goods and accepted payment for them, while in commercial practice he was expected in addition to arrange the goods for sale, to catalogue them and to advertise them. In prize procedure these tasks, or at least the responsibility for their execution, fell to the prize commissioners; they were performed not only by the auctioneer but by some one hired for the purpose by the prize commissioners. In a letter to the Secretary of the Navy, Richard Henry Dana, Jr., the district attorney for Massachusetts, expressed the feeling that the auctioneer's fee of $2\frac{1}{2}$ per cent in prize cases was exorbitant.¹¹² He reported it was bruited about that it was the settled practice in commercial cities for auctioneers to charge a large fee so as to pay half to the officer employing them. Mr. Welles evidently followed this lead through, for there is in the Navy Department files a copy of a letter from E. Delafield Smith, the district attorney for New York, to Robert Murray, the marshal, stating that it was necessary for the marshal to

¹¹⁰ 13 Stat. 306, sec. 22.

¹¹¹ *Prize Cases in New York*, p. 303. Statement that $2\frac{1}{2}$ per cent is the regular auctioneer's commission signed by six leading New York merchants, M. H. Grinnell, Charles Dennis, T. S. Lathrop, Edward Walter, Moses Taylor, Edward Minturn. This statement was sent by the marshal to the district attorney. *Miscellaneous Prize Matters, 1861-1871*, No. 110, U. S. Navy Department Archives.

¹¹² Letter of Aug. 22, 1862, *ibid.*, No. 67, also No. 113, dated Oct. 6, 1862.

furnish sworn testimony that the sums charged as paid by him had been paid in good faith without any bargains or arrangements for sharing commissions.¹¹³ There is also a copy of Murray's answer to the district attorney in which he furnished the desired sworn testimony.¹¹⁴

In the meantime Judge Sprague's decision in the Massachusetts prize court had drastically restricted the auctioneer's fees in prize cases in that district,¹¹⁵ and the Secretary of the Navy wrote to the district attorney for New York objecting to the continued high fee paid to the auctioneer there.¹¹⁶ Under date of January 14, 1863, the Solicitor of the Treasury wrote to the marshal in New York, calling his attention to Judge Sprague's decision and informing him that the district attorney would be instructed to oppose the allowance of such rates.¹¹⁷ However, even prior to this letter, the auctioneer's commission of 2½ per cent had, from November, 1862, on, been disallowed, and the papers indicate the auctioneer's protest at the reduction.¹¹⁸ The auctioneer's appeal was denied by Judge Betts in a decision handed down May 22, 1863.¹¹⁹ The law of March 3, 1863, made the reduction statutory. It provided that the Secretary of the Navy was to employ auctioneers of established reputation to make the sale under the direction of the marshal at a rate of compensation not to exceed 1¼ per cent of the gross proceeds. It also declared fraudulent collusion in the sale a felony carrying a penalty of a fine not to exceed \$20,000 and of imprisonment

113 Letter of Sept. 24, 1862, *ibid.*, No. 108.

114 Letter of Sept. 26, 1862, *ibid.*, No. 109.

115 2 Sprague 160.

116 *Prize Cases in New York*, p. 327.

117 *Ibid.*, exhibit 13, p. 580.

118 *Ibid.*, p. 30; schooner *Revere* (129), marshal's bill filed June 3, 1863. "Mr. Draper appeals from disallowance of auctioneer's fee." Steamer *Tubal Cain* (115), marshal's bill filed May 22, 1863, states auctioneer's bill disallowed \$654.88.

119 Blatchford, *op. cit.*, p. 347.

not to exceed ten years.¹²⁰ In the following year the Act of June 30, 1864, made a further reduction in the auctioneer's fee, as already stated.¹²¹

Every so often warehouse bills and appraisers' bills, also, caused some complications. The marshal testified that "the Secretary of the Navy expects me to scrutinize these bills very closely, and I have done so. I cut them down as much as I can get off, with a view to the interest of the government."¹²² When the marshal presented these bills for taxation by the court, however, they were sometimes objected to by the counsel for the captors or by the district attorney. The usual procedure of the court was to refer such contested bills to commissioners; the clerk of the court, the prize commissioners, or the United States commissioners might be appointed to serve in this capacity.¹²³ They took the testimony and submitted the evidence along with their recommendation.

It remains to consider the charges of the prize commissioners, the dual character of whose services has already been noted. On the one hand, they rendered services in connection with the preparation of the case for trial, on the other hand, they were responsible for the care and disposal of property involved in prize cases. Both categories of services were covered in their bill, which, under the statute of March 25, 1862, was subject to review by the court. Like other officials, the prize commissioners, accordingly, submitted a tariff of fees for their respective services, itemizing the various services they performed.¹²⁴ In support of their proposed rates of compensation,

¹²⁰ 12 Stat. 759, sec. 3.

¹²¹ Cf. p. 81, note 110, *supra*.

¹²² *Prize Cases in New York*, p. 398.

¹²³ Steamer *Ella Warley* (88), notice of motion for order of reference of the bill of Blunt, the appraiser, filed under date of March 26, 1863. Schooner *Stephen Hart* (54), July 5, 1866; Blatchford, *op. cit.*, p. 611, for reference of warehouse bill.

¹²⁴ Blatchford, *op. cit.*, p. 206.

Mr. Owen, one of the New York prize commissioners, submitted a brief, a copy of which is preserved in the prize court files of the New York court.¹²⁵ The brief urges that the prize commissioners "be allowed certain sums for all services by them performed, and that for the liability and responsibility of taking care of and keeping the prize property while in their hands they should be compensated by way of a commission on the amount held in custody."¹²⁶ In respect to the commission they urged application of Admiralty Rule 50, which allowed the marshal

on all sums not exceeding \$5,000 held in custody *less* than *thirty* days, two per cent, and on all sums exceeding that one per cent, and if held more than *thirty* days, 2½% on \$5,000 and 1½% on all over.¹²⁷

In subsequent testimony Mr. Owen stated that Judge Betts took the bill of costs that had been prepared and, after hearing arguments of counsel, "altered it materially, until he was satisfied with it . . . That bill of costs, thus prepared, I have had printed . . . that printed form has been used in all the prize cases we have had."¹²⁸ Judge Betts himself stated:

Immediately on the passage of the act of March 25, 1862, the court applied itself, with the active aid of one of the prize commissioners, a lawyer of long experience and high distinction in the profession, to searching for precedents in books of practice, and to gathering the usages of the government in the allowances made under its authority to its employees for services of a similar character and nature.¹²⁹

¹²⁵ *Prize Cases in New York*, p. 200.

¹²⁶ Fifth item in manuscript of brief in New York prize commissioners' files.

¹²⁷ Quoted thus in part ii of fifth item of brief.

¹²⁸ *Prize Cases in New York*, p. 200.

¹²⁹ Blatchford, *op. cit.*, p. 587.

The custody fee was denied in the cases of the steamer *Merrimac* (173) and the schooner *Hattie* (170). Judge Betts evidently considered it an elastic measure, for he said:

In arranging the tariff of charges, the court took into consideration the probability that the prosecutions, on the success of which the compensation of these officers is dependent, would occasionally be defeated, or fail to yield proceeds adequate to their satisfaction; and, accordingly, the estimates were framed with a view to meet such deficiencies.¹³⁰

Where the custody fees appeared to increase the prize commissioner's compensation above the statutory maximum, that item was excised before the court would approve the bill.

The statute of July 17, 1862, limited the annual official revenue of the prize commissioner to \$3,000; any amount received in excess of this figure was to be paid to the Treasury.¹³¹ The next year it was affirmed that there were to be no more than two prize commissioners in any one district, and that their annual combined salary was not to exceed \$6,000.¹³² A complication was introduced by declaring that one of the two prize commissioners must be a retired naval officer, appointed by the court and approved by the Secretary of the Navy. This necessitated a change of personnel in New York. As of April 3, 1863, Henry Elliott was reappointed as prize commissioner, but in conformity with the statutory provision E. H. Owen was succeeded by Commander Henry Eagle, U.S.N.¹³³ The act of the following year, passed June 30, 1864, modified the situation still further; the number of prize commissioners that might be appointed in a district was raised to three, of whom one must be a retired naval officer, who was to receive no compensation other than his pay from the navy, and at least one prize com-

¹³⁰ The *Merrimac*, *ibid.*, p. 594.

¹³¹ 12 Stat. 608, sec. 12.

¹³² 12 Stat. 760, sec. 5.

¹³³ MSS. *Rough Minutes of United States District Court*, *op. cit.*, vol. 18, p. 40.

missioner must be a member of the bar of not less than three years' standing.¹³⁴ This provision allowed the reappointment of Mr. Owen.¹³⁵ As before, no prize commissioner was allowed to retain more than \$3,000 a year.

When all bills against the prize had been taxed, the clerk of the court drew up a certificate of the proceeds. This listed the gross proceeds from vessel and cargo, whether secured by sale or by deposit of the appraisal money. This certificate also listed the amounts paid to the officers of the court, to the marshal, including his disbursements, to the district attorney, to the counsel for captors, to the clerk of the court, and to the prize commissioners. These charges constituted the total costs.

Before the net proceeds could be distributed by the Treasury, thus concluding the case, the prize commissioners were directed by the court,

to proceed to take and report the requisite evidence to the court, to the end that a final decree may determine what public ships of the United States are entitled to share in the prize, and whether the prize was of superior, equal or inferior force to the vessel or vessels making the capture.¹³⁶

To this end the prize commissioners took testimony and received the evidence presented by the district attorney and the counsel for captors. This evidence was taken mainly from the affidavit of the prize master and the answers to question number five of the standing interrogatories from the witnesses' depositions *in preparatorio*. Where more than one ship claimed a share of the prize proceeds on the basis of joint capture, the task of the prize commissioners entailed difficulties. Evidence had to be secured from witnesses as to the movements of the vessels and their distances from the prize. The statutory provisions of the original regulation of the matter by Congress in

¹³⁴ 13 Stat. 306, sec. 5.

¹³⁵ July 12, 1864. MSS. *Rough Minutes*, *op. cit.*, vol. 19, p. 488.

¹³⁶ Quoted by Judge Betts in his decision in the case of the *Anglia* (131), Blatchford, *op. cit.*, p. 567.

the Act of March 2, 1799, were these: "The produce of prizes taken by the ships of the United States" shall "be proportioned and distributed", and (article 9)

whenever one or more ships of the United States *are in sight* at the time of any one or more other ships, as aforesaid, are taking a prize or prizes, or being engaged with an enemy, and they shall all be so *in sight* when the enemy shall strike or surrender, they shall share equally.¹³⁷

The Act of July 17, 1862, modified the phraseology in respect to the position of the capturing vessels with relation to each other, and directed that "when one or more vessels of the navy shall be within *signal distance* of another making a prize, all shall share in the prize."¹³⁸ In the cases of the *Anglia* (131) and the *Scotia* (134), two prize ships captured while running the blockade at Charleston, two public vessels, which had not actively participated in the capture but had been, one in sight of the prize when taken and the other in signal distance, took exception to the prize commissioners' report excluding them from a share in the prize. Judge Betts decided against them, interpreting the law of July 17, 1862, thus:

It will not be implied, constructively, that assistance has been rendered by a ship not palpably contributing to the capture of another, unless she was within signal distance of the one making the prize, in circumstances which might have justified the capturing ship in demanding and expecting her assistance, and the prize vessel in apprehending her interference. These facts must be affirmatively proved by the vessel claiming to share in the proceeds of the prize property taken.¹³⁹

Another difficulty that presented itself in the determination of vessels sharing in the prize arose when the capture was brought about by cooperation with either land forces or merchantmen.

¹³⁷ *Loc. cit.*

¹³⁸ *Loc. cit.*

¹³⁹ *Ibid.*, p. 571.

In the former case it was decided that they were not ordinarily to be recognized as joint captors unless it was proved on their part that the capture had been produced by their active interference.¹⁴⁰ In the latter case, prior to the Act of June 30, 1864, it was decided by Judge Betts in a decision in the case of the *Merrimac* (173) (January, 1864), in which a merchant steamer actively cooperated in the capture, that

under the acts of March 25, 1862, and July 17, 1862, . . . an armed merchant vessel, not in the service of, and having no commission from, the United States, although she is present at the capture of a prize and cooperates therein, is not entitled to share in the proceeds.¹⁴¹

However, in the case of the schooner *Agnes H. Ward* (103), which was captured by a merchant steamer acting alone, Judge Betts awarded her a portion of the proceeds.¹⁴² The details of the case are interesting. The schooner *Agnes H. Ward* (103) on a voyage from Wilmington, North Carolina, to Nassau, was captured off the coast of South Carolina by the merchantman *Northern Light*, returning from California. Aboard the *Northern Light*, as a passenger, was James M. Watson, an officer of the United States Navy. The capture was made under his direction by the master, officers, and a portion of the crew. The prize was taken to New York, where it was libeled and condemned. The proceeds of the sale were divided as follows: a moiety to the Pension Fund, 3/20 of the moiety to Watson, and the residue divided in the proportion of 4/10 to Cornelius Vanderbilt, owner of the vessel, 4/10 to the master of the vessel, and 2/10 to the crew.¹⁴³ This case is explained by Upton, on the principle that a merchant vessel making a capture is not

140 *Two Hundred and Eighty-Two Bales of Cotton*, *ibid.*, p. 302.

141 Digest of case of *Merrimac* (173), *ibid.*, p. 584.

142 Not in Blatchford, but decree is in file of schooner *Agnes H. Ward* (103), under date of July 24, 1863.

143 *Ibid.*

entitled by *strict law* to any share whatever of the proceeds of the captured property:

but it has not been the practice to exact in such cases the legal right of the government to the entire proceeds, but on the contrary, to award the merchant captors a portion of the proceeds, and sometimes even the whole, according to the circumstances of the case, and the meritorious character of the services performed.

By this practice it is understood that the concession of the strict legal rights of the government is optional with the Navy Department, and the courts in such cases, act upon such concession, in their decrees of distribution.¹⁴⁴

The Act of June 30, 1864, entitled "An act to regulate Prize Proceedings and the distribution of prize money, and for other purposes," legalized the participation of vessels not of the navy in the distribution of the proceeds of the prize in certain cases.¹⁴⁵ On the basis of this law, Judge Betts referred to a commission the question of the amounts to be granted to the captors on board a transport ship, the *Arago*, not a public ship, which had taken as prize the steamer *Emma* and her cargo.¹⁴⁶

The actual distribution of the net proceeds was by the Navy Department. If the final decree of distribution of the prize court had declared that the prize was of inferior force, the net proceeds were divided equally between the United States and the captors; if the prize was declared of equal or superior force to the captors, the net proceeds became the sole property of the captors. The directions for distribution are stated in section 3 of the Act of July 17, 1862, and again in section 10 of the Act of June 30, 1864.¹⁴⁷ First, to the commanding officer of a fleet or squadron, 1/20 part of all the prize money awarded to the

¹⁴⁴ Upton, *op. cit.*, p. 463.

¹⁴⁵ 13 Stat. 306, sec. 10.

¹⁴⁶ The *Emma* (172), Blatchford, *op. cit.*, p. 607.

¹⁴⁷ 12 Stat. 606, and 13 Stat. 306.

vessel or vessels under his immediate command; to the commander of a single ship, 1/10 part of all prize money awarded to the ship under his command, if such ship at time of making the capture was under the immediate command of the commanding officer of a fleet or squadron, and 3/20 if his ship was acting independently of such a superior officer; the residue shall be distributed and apportioned among all others doing duty on board and borne upon the books, according to the respective rates of pay in the service. Section 5 of the act of 1862 provided that the commanding officer of every vessel which shall capture and seize upon any vessel or vessels as prize shall, as early as practicable after the capture, transmit to the Navy Department a complete list of the officers and men of his vessel entitled to share, inserting thereon the quality of every person's rating, on pain of forfeiting his whole share of the prize money resulting from such capture and suffering such further punishment as a court martial shall adjudge. In the cases where prize money was divided between the United States and the captors the government turned over its share to the Navy's pension fund.

The sequence in which prize court procedure has been described in this chapter has been used also as the basis for arranging the microfilm record.

CHAPTER IV

THE INVESTIGATION OF THE NEW YORK PRIZE COURT

ON February 28, 1863, the Washington correspondent of *The New York Herald* reported:

Mr. King (rep.) of New York presented a memorial from the merchants and ship owners of New York City in reference to the sale of prizes in that district, asking for investigation and for the passage of acts to secure a more speedy and less expensive sale and distribution of the proceeds. Referred to the Naval Committee, with instructions to inquire into the propriety of appointing a committee of investigation into this matter. This correspondent stated some time since that an official of New York had visited here for the purpose of calling the attention of the government to frauds in the way of collusions that have existed in New York in transactions at prize sales.¹

Apart from this newspaper publicity,² the rumor factories had been busily at work in New York. As Mr. Sturges, of Sturges, Bennet & Company, prominent coffee dealers in New York, testified at the subsequent hearings before the Solicitor of the Treasury, "We have not paid any attention to these sales [prize sales] for a long time past." Giving as the reason for this discontinuance of their attendance at the sales,

¹ *The New York Herald*, February 28, 1863; a month earlier, in news from Washington, the same paper had carried the story of representations by prominent New York officials of fraud in the New York prize court. *Ibid.*, Jan. 15, '63.

² Mr. Jordan, Solicitor of the Treasury and Special Commissioner, in his report to Secretary Welles commented on the extent of the publicity, saying "...prize proceedings had already been the subject of acrimonious comment and correspondence in the public press." *Letter from the Secretary of the Navy in answer to a resolution of the House, of the 15th instant, relative to the disposition of prize cases in New York*. Executive Document 74, 38th Cong., 1st Sess., p. 3. Hereafter referred to as *Prize Cases in New York*, this consists of the correspondence preliminary to the investigation, the briefs and documentary evidence submitted, the testimony taken before the Solicitor, and the Solicitor's report.

the impression we derived from what we heard from others. You know how men get impressions sometimes. We got the impression that it was time wasted to attend these sales; that there were parties who had, in some way, facilities for examining these goods, or getting reductions from their bids, which we did not have, and, therefore, it would be a waste of time for us to attend. I suppose that is the general feeling. It may be all wrong, but that is the general impression.³

Corroboration of the strength of these rumors is found also in the testimony of Mr. Moses H. Grinnell, president of the Sun Mutual Insurance Company and partner until its dissolution in Grinnell, Minturn & Company, extensive ship owners and merchant princes.⁴

I have to state that for the last eighteen months and almost since the sales commenced of this property by auction, there have been various rumors that the whole thing was not conducted in a business-like and proper manner. That sort of rumor gaining in strength from that time down to within the last couple of months or six weeks, and becoming stronger and stronger by the development of facts, which we supposed to be facts, or rumors, coming before the community, that this business was not conducted in a right and proper manner, led a number of us gentlemen, myself especially, to correspond with the Secretary of the Navy, and suggest to him that this alleged injustice, these rumored wrongs, which were perpetrated upon the captors, should be looked into, naming no individuals, speaking of no parties, except that the thing was conducted in a highly improper manner.⁵

³ *Prize Cases in New York*, p. 196.

⁴ Mr. Grinnell was one of New York's distinguished citizens. Born in New Bedford, Massachusetts, he had migrated to New York and with his brothers established one of the leading mercantile houses. His active participation in Grinnell, Minturn & Co. ended in 1861. He had been president of the New York Chamber of Commerce from 1843 to 1848, Whig member of Congress, 1839-41, and Republican presidential elector in 1856. He was active in forming the Union Defense Committee in New York. *Dictionary of American Biography*, VIII, 5; Albion, R. G., *The Rise of New York Port*, p. 248.

⁵ *Prize Cases in New York*, p. 404.

More specific and less anonymous than rumor was a letter of the auctioneers, Simeon Draper and his son John, addressed to Gideon Welles, Secretary of the Navy. This letter, dated "Washington City, January 15, 1862," is quoted in full because of its importance in initiating the subsequent investigation.

Sir:

Deeming it our duty, as auctioneers in prize cases in the city of New York, to apprise you of certain transactions in those sales not at all creditable to those whose business it is to protect government interests, we beg leave to submit to you the papers herewith for consideration and investigation. In addition to the case of coffee and tea per prize steamer *Ann*, there have been others, and one where the counsel for the captors is said to have received money not to oppose a reduction which never ought to have been made. A person in connexion with the office of the United States prize commissioners did actually receive two hundred dollars in that same case to our certain knowledge, we having seen the check.

The inference we draw from these papers we hand you is, that the government and captors are not realizing all they should from these sales, and that persons connected with them are making money fraudulently out of them.

This bidding goods in at exorbitant prices, and then getting reductions from the court, when, according to terms of sale, as binding as they could possibly be, they never should be had, is injuring the government to an immense extent, for genuine buyers will not attend.

Believing that we have simply done our duty in presenting to you these facts, and holding ourselves in readiness to give you any and all information to stop these practices, we remain, most respectfully,

SIMEON DRAPER
Per J. H. DRAPER, and
J. H. DRAPER, *Auctioneers*⁶

⁶ *Ibid.*, p. 545. It is probably to this that the *New York Herald* correspondent referred on Jan. 15th, cf. note 1, *supra*.

Charges as specific as these could not be ignored by the Secretary of the Navy. The effect of the letter, so positive and dogmatic in tone, must, to be sure, have been somewhat weakened by a letter sent by Mr. Glassey, Mr. Draper's deputy provost marshal, who had accompanied John Draper on his trip to Washington to present these charges. Mr. Glassey's letter, addressed to the chief clerk of the Navy Department and dated February 2, 1863, corrected the statement that "a person in connexion with the office of the United States prize commissioners did actually receive two hundred dollars. . . we having seen the check". They had discovered that the Mr. William J. Osborne who had received the check was the proctor for the purchaser and was in no way connected with the court and that "There is a Mr. John O. Osborne, who is a United States commissioner, but he was not connected with the transaction."⁷ He might have added that Mr. John Osborne was in no way connected with the prize commissioners.

The realization that at least one of their charges, perhaps the most specific and almost the most damning, was false and based on such a combination of errors did not seem to perturb the Drapers, for they addressed a second letter to the Secretary of the Navy three days later:

Sir:

Washington City, February 5, 1863.

We have made some statements to your department in regard to malpractices in prize sales in the city of New York, and we most respectfully request of you a communication to the Secretary of the Treasury, asking him to place this matter immediately in the hands of the Solicitor of the Treasury, in order that public confidence may be at once restored in these sales, and that parties may be punished who have forgotten their trusts, and made these sales a source of emolument to themselves.

Very respectfully,

SIMEON DRAPER

J. H. DRAPER

Auctioneers

Hon. Gideon Welles, Secretary of the Navy.⁸

⁷ *Ibid.*, p. 544.

⁸ *Ibid.*, p. 544.

In the meantime, on the 15th of January, the day of the receipt of the Drapers' first letter, Secretary Welles had written to Mr. Upton, counsel for the captors in New York under appointment of the Secretary of the Navy, asking for a "prompt and satisfactory explanation" of the charges.⁹ Mr. Upton replied in two letters, dated January 20th and 21st, stating that the delay was due to the fact that he had not received the Secretary's letter until the morning of the 20th.¹⁰ "The explanation," according to Welles, "so far as the department could judge, was entirely satisfactory."¹¹ Mr. Upton stated his own consistent opposition to applications by purchasers at prize sales for reductions and allowances on prices bid, and declared that the first reclamation in prize cases had been secured at the "earnest solicitation" and upon the sworn statements of Mr. Simeon Draper, the auctioneer. He enclosed in his second letter a copy of Prize Commissioner Owen's report, with the testimony of the hearing annexed, recommending the reduction in the case of the coffee and tea purchased from the cargo of the steamer *Ann* (114). He added "These facts, it must be conceded, as sworn to, establish a strong and almost irresistible case in favor of the application." However, he had been in Washington at the time and knew nothing of it personally; his opposition to such motions had "been on principle, altogether independent of the facts". He ended his first letter:

Now and at all times I court investigation of any question involving the performance of my duties, knowing well that in this regard my record is clear. Indeed, it is a rigorous persistence in what I have considered my duty under the law in relation to the auctioneer's commission in prize causes which has induced the charge, to which this is a reply.

⁹ Letter of Mr. Welles to Hon. Edward Bates, Attorney General, Aug. 21, 1863, *ibid.*, p. 1.

¹⁰ *Ibid.*, pp. 541-543.

¹¹ *Ibid.*, p. 2.

He concluded his second letter, written the next day, with a counter-attack:

Mr. Elliott [prize commissioner] and myself, some days since received from Mr. Simeon Draper a message, thus, "If Mr. Elliot and Mr. Upton will let me alone, I will let them alone". I suppose, so far as I am concerned, the only construction of this is: "Mr. Upton, violate your official duty, assent to or wink at my commission of $2\frac{1}{2}$ percent, by which, at the year's end, I may have quietly robbed the government and the captors of \$100,000, and I'm your friend; otherwise, I'm your enemy". Mr. Draper has made a mistake. He did not know me. I have not stirred in the dirty waters of party pot-house politics, and consequently, until this question of the auctioneers' commission arose, I have never had the least acquaintance with Mr. Simeon Draper. Had he known me, he would not have dreamed of the consummate impudence of sending to me such a message.

At the subsequent investigation, during the examination of the Hon. Robert Murray, marshal of the United States for the Southern District of New York, a still less restrained version of this story was revealed:

Question [Mr. Upton]: Now, let me call your attention to an interview which you had with him [Mr. Draper] and please tell us if he stated anything in that interview—and if anything, what—in relation to Prize Commissioner Elliott and myself in connexion with his proceedings in regard to these charges now under investigation? What did he say, and what transpired?

Answer: He called into my office about 4 o'clock in the afternoon in apparently a very high state of excitement. Said he, "I am going to send these two s——s of b——s to Fort Lafayette." Said I, "Whom do you mean?" Says he, "Elliott and Upton;" said he "I thought I would come and see you before executing the order. I want you to say to them, if they will let me alone I will let them alone." I said, "I can-

not carry a message of that kind." And there the interview ended.¹²

Although Welles did not know of these last details, Upton undoubtedly did at the time he wrote to Welles, and this probably partially explains the sharpness of his criticism of Mr. Draper.

Despite Mr. Welles' feeling that Mr. Upton's explanation appeared satisfactory, the renewal of the charges "implicating officers of the district court and other persons not legally under the supervision of the department, or amenable to any board of investigation which it had authority to appoint, it became necessary or expedient to take other steps."¹³ Mr. Moses Grinnell had added his representation urging the investigation upon the Secretary of the Navy. Mr. Grinnell thought it was his communications that precipitated the request of the Solicitor, but Mr. Welles does not indicate that this was so.¹⁴ In his explanation of his procedure, he stated that the department concluded that the proper course would be to refer to the Solicitor of the Treasury, under the fifth section of the act of May 29, 1830,

providing for the appointment of a Solicitor of the Treasury, which directed "that the said Solicitor shall have power to instruct the district attorneys, marshals, and clerks of the circuit and district courts of the United States in all matters and proceedings appertaining to suits in which the United States is a party or interested, and cause them, or either of them, to report to him, from time to time, any information he may require in relation to the same."¹⁵

On February 10, 1863, Secretary Welles accordingly sent Mr. Edward Jordan, Solicitor of the Treasury, a letter, enclos-

¹² *Ibid.*, p. 397.

¹³ Letter of Mr. Welles to Hon. Edward Bates, Aug. 21, 1863, *ibid.*, p. 2.

¹⁴ *Ibid.*, p. 405.

¹⁵ Quoted in letter of Mr. Welles to Mr. Bates, Aug. 21, 1863, *op. cit.*, p. 2.

ing the letters from Mr. Draper and the letters from Mr. Upton, with their respective enclosures, and stated that these papers "are referred to you for investigation and such action as may be necessary."¹⁶

Mr. Jordan, in his report to Mr. Welles dated August 5, 1863, stated that he had proceeded to New York "as soon. . . as the numerous and pressing duties of my office would permit . . . to inquire into the foundation of the charges preferred to you of irregularities in the custody and disposition of prize property, and the proceeds thereof, in that city."¹⁷ On his arrival in New York about April 20, 1863, he was waited upon by a group of merchants who, interested in the investigation "and having become more or less familiar with the particulars in which it was alleged that irregularities had occurred", offered their assistance. Mr. Jordan accepted their offer with alacrity and asked them to submit a statement of the leading subjects that in their opinion merited investigation, and a list of all witnesses they deemed should be examined.¹⁸ Such a statement was prepared and transmitted to Mr. Jordan under date of April 24, 1863, and was signed by Mr. Grinnell, as chairman.¹⁹

The statement cited four cases in which reclamations or reduction of the price bid had occurred; these included the case of the steamer *Ann* (114) and one, the *Stettin* (102), in which the attorneys securing the reduction had presented a bill for \$1,000, saying that \$500 was for their own services and that no inquiry must be made as to what the other \$500 was for. It mentioned also a case of a sale in which it had been said a false return of weight had been made, and another in which goods bid for were not taken and had to be resold "at a loss of several thousand dollars". It claimed that vessels and property had been sold at places other than those advertised, and that \$25,000

¹⁶ *Ibid.*, p. 523.

¹⁷ *Ibid.*, p. 2.

¹⁸ *Ibid.*, p. 3.

¹⁹ Quoted in full, *ibid.*, pp. 23-25.

worth of tobacco from the cargo of the *Hiawatha* (2) was unaccounted for. It charged the officers of the court with taking exorbitant fees and with making excessive charges. A number of suits had been instituted for property which could have been included in one proceeding. It concluded with the statement that time did not permit them to include all the cases in which wrong had been done, but that in the course of a few days they would be able to present additional facts.

This statement, together with the letter sent to the Secretary of the Navy, served as the basis of the investigation, but not to the exclusion of other relevant matter. Mr. Jordan requested all those persons whose names had been furnished by the committee or by any other person as having information pertinent to the questions under investigation to appear before him to give him the benefit of their knowledge.²⁰ All but three of these thus invited appeared and submitted to an examination under oath.²¹ The investigation took about a month, most of which time was consumed in the examination of witnesses. The evidence with the documentary exhibits occupies 476 of the 594 pages of the Secretary of the Navy's printed report to Congress.²²

Mr. Jordan was offered the assistance of a distinguished legal counsel, Judge Kirkland. Judge Kirkland explained that he had been requested to appear "not in the capacity of a prosecuting attorney, but for the purpose of eliciting the truth in this investigation," by the committee of gentlemen who had started this inquiry, Messrs. Grinnell, Taylor, Captain Marshall, Captain Nye, Messrs. Minturn and Denning Duer. Mr. Jordan stated

²⁰ *Ibid.*, p. 3.

²¹ Those who did not present themselves were Robert M. Ward, Walter S. Gore, the warehousemen, and N. H. Coles, Jr., a cousin of Mr. Ward, who purchased a large quantity of goods at the first sale of the cargo of the *Stettin* (102) under the name of Smith.

²² *Prize Cases in New York*. Unfortunately this volume is not indexed, and the exhibits are arranged in no chronological or numerical order that can be detected.

that he "had no objection to any gentleman appearing here to take part in the investigation as a sort of counsel"; in fact, he welcomed assistance which would bring to light information that his unfamiliarity with many of the circumstances might fail to elicit if he alone did the questioning. But he proposed to control the investigation himself.²³

Furthermore he excluded the press on the ground that he did not "consider it compatible with the public interest that any publication shall be made of this investigation until these proceedings are ended,"²⁴ and requested that all who were admitted to the investigation observe silence in regard to what occurred at the hearings to prevent *ex parte* or "distorted, partial, or fragmentary" statements of the evidence getting to the public. An additional precaution was his refusal to allow the committee the use of their own stenographer; both sides, however, were allowed equal access to the minutes of the hearing.²⁵

Mr. Jordan's efforts to safeguard the inquiry against publicity failed. On June 6, 1863, the *New York Express* carried the story "Alleged Frauds in Prize Sales—A peep into the Star Chamber at the custom house—how the inquiry was conducted—serious charges against high officials—false weight and alleged bribery—how the navy has been robbed—a whole cargo missing, etc." It was a long article, in the main reproducing the illustrations offered in Mr. Grinnell's letter of April 24th, written in good journalistic fashion, with plenty of italics and exclamation points, and closing on the dire note: "We have the names of all accused, but, desiring not to forestall the action of the government, we omit their publication."²⁶ *The New York Herald* carried a similar story in less detailed, less sensational, but more directly damning fashion.

²³ *Op. cit.*, p. 69.

²⁴ *Ibid.*, p. 68.

²⁵ *Ibid.*, p. 3.

²⁶ *Ibid.*, pp. 64-68.

The investigation relative to the alleged frauds in the sale of prize vessels has led to the development of some facts not very creditable to the honesty of certain officials standing very high in this city. . . . The report of Mr. Jordan, the Solicitor, is of course kept secret until such time as the government shall see fit to make it public, but it is believed that the above charges have been proved so clearly as to leave no doubt whatever upon this subject.²⁷

As the writer of the *New York Express* article so cogently put it in his flamboyant style,

Whatever may be the final result of the investigation, even if, as some anticipate, a disposition has been manifested to cast its records into the "tomb of the Capulets", there is no doubt that the captors of vessels will in future send them to ports where they will be honestly sold for their full value, and thereby deprive this city of the vast amount of labor and money which such seizures would circulate among a large class of the people.²⁸

To that extent the article was certainly correct. Of the 367 cases reported by the letter of the Secretary of the Navy on February 23, 1863, as having been sent to the ports of Boston, New York, Philadelphia, Key West, Baltimore, and Washington, 141 had been sent to New York.²⁹ In the ensuing two years only 54 more prizes were sent to New York for adjudication, though the total number of prize vessels jumped from 367 to over a thousand in the four years of the blockade.³⁰ Obviously New York's share in the activity of prize cases decreased tremendously after the investigation.

To what extent were these charges proven true, and to what extent was the investigation honest and effective in accomplish-

²⁷ *The New York Herald*, June 17, 1863, p. 4.

²⁸ *Prize Cases in New York*, p. 65.

²⁹ *Letter of Secretary of the Navy*, February 18, 1863, called House Executive Document 73, 37th Cong., 2nd Sess.

³⁰ Cf. Chapter II, note 90, *supra*.

ing its purpose of inquiring into the foundation of the charges of "irregularities in the custody and disposition of prize property"—using the terms of reference of Mr. Jordan, more veiled and euphemistic than the forthright charges of dishonesty, bribery and graft levelled by Mr. Grinnell's committee of New York merchant princes? These are questions that must be answered in any discussion of the procedure of the New York prize court.

The hearings began on May 4, 1863, and lasted through May 29, 1868. In all, forty witnesses appeared before the Solicitor to give testimony under oath. They included, of course, the officials of the prize court: the two prize commissioners, Henry H. Elliot and Edward H. Owen; the counsel for captors, Francis H. Upton; the district attorney for the Southern District of New York, the Hon E. Delafield Smith; and the United States marshal for the district, the Hon. Robert Murray. There appeared also people intimately connected with prize proceedings, such as the auctioneers, Simeon Draper and his son John, and weighers and gaugers of prize goods, and the owner of one of the warehouses, the Atlantic Stores, used for the storage of prize goods. The owners of the Union Stores, the other warehouse most frequently used, did not appear personally in response to Mr. Jordan's request, but they were represented throughout the proceedings by their counsel, E. C. Benedict, the author of the standard text on admiralty procedure. Others who presented themselves were several merchants who had been named by the committee or who wished to give testimony about the reclamation and the sale or custody of prize goods, and three members of the committee that had formulated the charges, Mr. Grinnell, Captain Marshall, and Mr. Minturn.³¹ Mr. Jordan con-

³¹ Robert B. Minturn was a partner in the firm of Grinnell, Minturn & Co. His sister had married Henry Grinnell, the brother of Moses Hicks Grinnell. He, however, was a New Yorker by birth and, as Mr. Albion puts it, was born to the purple. He retired from active participation in the firm in 1845. He, too, had been a Whig and became a Republican and was the first president of the Union League Club. Charles Marshall, on the other hand, had sailed before the mast and become the captain of some

ducted the examination and all witnesses were examined and cross-examined by the attorneys of both sides.³² The committee was represented by Judge Kirkland and by John C. T. Smidt and S. J. Glassey, who appear to have had complete freedom in examining and cross examining witnesses; Mr. Owen and Mr. Upton did the principal questioning on behalf of the accused officials. The Solicitor took time off for a visit to the Union stores, the warehouse owned by Ward and Gore; he was accompanied by the counsel for the committee, the prize commissioners, the marshal, the counsel for the captors, and others interested in determining at first hand the suitability of this warehouse for the storage and sale of prize goods.³³ At the end of the hearings briefs were submitted by Mr. Upton, by Mr. Benedict, representing Ward and Gore, the warehousemen, by John C. T. Smidt and S. J. Glassey, counsel for the committee, and by Charles P. Kirkland, also on behalf of the committee.

The report of the Solicitor on the investigation was based on the evidence assembled, including both the briefs and the testimony with its documentary exhibits, many of them copies of papers from the files of cases. The charges of graft and corruption against the officials of the court admittedly were not proven. Judge Kirkland, the counsel for the committee of merchants, made that clear in his brief. In his remarks about the prize commissioners he says:

I frankly say that I see nothing to affect the official integrity or the capacity of either of these gentlemen. Doubtless some

of the best of the clippers of the Black Ball Line. In 1834 he became the agent for the line and a commission merchant, but retained his interest in the sailing men. He was head of the Marine Society and director of Sailors' Snug Harbor, and active in the Union Defence Committee. See Mr. Albion's articles in *Dictionary of American Biography*.

³² Mr. Jordan was justified in his statement: "When this investigation is closed, I do not believe anybody will say that I interposed any obstacle in the way of the most thorough inquiry." Hearing of May 5, 1863, *Prize Cases in New York*, p. 101.

³³ *Op. cit.*, p. 190.

facts are shown, which, if unexplained, might give rise to reasonable suspicion of misconduct on their part. . . . But I am bound in all candor to say that each of those matters are entirely explained, and that in no manner is the character or integrity of either of the commissioners thereby affected.

He gives a similar clean bill of health to the district attorney, the counsel for captors, and the marshal, although, in the case of the last named, he adds: "there are some matters which, without further explanation, subject the marshal to the charge of carelessness, if nothing more, in the administration of his office as connected with prize cases." In this connection, he lists the loss of tobacco from the cargo of the *Hiawatha* (2), the delivery of property sold at a lower price than bid, high insurance premiums, and high payment to Ward and Gore for storage and labor, etc.³⁴ This was also the judgment of the Solicitor, Mr. Jordan. His summary of conclusions begins with the statement:

And, first, I think I may say with entire truth that there is nothing in the evidence adduced before me that can warrant any impugment of the honesty of purpose of any person officially connected with the reception or custody of prize property; or with the judicial proceedings for its disposition, or for the disposition of its proceeds. And I think I may with equal truth go further, and say that the evidence shows that those gentlemen (I speak, of course, of those only whose conduct has come within the province of my inquiries) have, without exception, in the main, discharged the arduous and perplexing duties which have devolved upon them with great fidelity, zeal, and ability.³⁵

Having offered a blanket denial to the blanket charges of Mr. Draper, the Solicitor's report dealt with the specific charges individually, dividing them into several categories: 1, the reception of prize property; 2, its custody and preservation; 3, the judicial proceedings for its condemnation or other disposition;

34 Brief of Charles P. Kirkland, submitted June 2, 1863, *op. cit.*, pp. 58-63.

35 *Ibid.*, p. 4.

4, the ministerial acts for its sale or other disposition, under the orders of the court; 5, the custody and care of the proceeds; and 6, the fees and charges paid out of these proceeds.

In the first category, the reception of prize property, he thought no ground for complaint existed. His judgment is well borne out by the papers themselves. The *Prize Commissioners' Register* indicates great meticulousness upon the part of the prize commissioners in dealing with this question. In every case there is the entry of the visit of the prize commissioner to the prize for the inspection of the prize and the sealing of the hatches, with the initials of the particular prize commissioner who performed the task and the cost of the trip.³⁶ The cash book also kept a careful expense account for each of these trips. In cases where the prize ship had not been sent into port, but the cargo had been sent by another ship, there is the entry of inspection.³⁷ The prize commissioners kept a cargo book, cross referenced with the *Register*, which very carefully listed the cargo on board each prize, and the warehouse where it was stored, and the date when it was sold, together with the gross amount realized. The prize cargo and vessel were in the custody of the prize commissioners until upon the issuance of a monition they were attached by the marshal and taken into his custody following the filing of libel. The date of attachment is recorded on the monition by the marshal or by his deputy. The prize commissioners' cash book and bills, and later the marshal's bills, include the bill of the ship keepers while the prize was in their charge.³⁸

This problem of the care and custody of prize property is the second question dealt with by the Solicitor, but there his report is more guarded:

³⁶ For example "prize commissioners' seal on hatches, expenses \$.82. H. H. E." in *Prize Commissioners' Register*, vol. A., p. 1, May 24, 1861, in the case of the barque *Hiawatha* (2).

³⁷ "Inspected it on board *Baltic*, ordered it discharged into Union Stores." *Prize Commissioners' Register*, vol. A., p. 150, June 2, 1862, in the case of the sloop *Annie* (108).

³⁸ Cf. Chapter III, p. 56, *supra*, and note 41, *infra*.

There is nothing to indicate that the berths provided for captured vessels are not secure, . . . and there is nothing to show that such care is not taken of them as to prevent spoliation or loss, or injury . . . but there is evidence indicating that some of these vessels have been permitted to deteriorate for want of paint, cleansing, and the like attentions.³⁹

And here, too, the *Prize Commissioners' Register* furnishes corroborative evidence in the form of frequent notations of affidavits by appraisers that "vessel is perishing".⁴⁰ The marshal's explanation was that maintenance funds were inadequate, for the custody fees of \$2.50 per diem merely covered the cost of a ship-keeper.⁴¹ The warehouses chosen for the storage of prize cargoes were described as "convenient of access, secure, and commodious. . . . probably in themselves the most eligible that could have been selected, having in view the prime considerations of security, necessary expense, and advantage of sale." There was no ground to question "care. . . exercised by the warehousemen in receiving, preserving, and delivering the goods committed. . . ." ⁴² "Rumors of larcenies seem to have been set afloat, but they appear to have had little, if any, foundation, and to have originated in error, if not in a worse source." ⁴³ The one charge, in this connection, found to have any validity was the case of the loss of 250 packages of tobacco said to be worth \$25,000 from the cargo of the barque *Hiarwatha* (2). In this case, the supercargo had prevailed upon the marshal, prior to the discharge of the cargo, to allow him to put it in warehouses of his own choice, promising to give the marshal the warehouse receipts. Instead, he had shipped 250 packages of the

³⁹ *Prize Cases in New York*, p. 4.

⁴⁰ Ship *North Carolina* (3), July 2, 1862, *P. C. R.*, vol. A, p. 2; "vessel is rapidly deteriorating", schooner *Crenshaw* (6), *ibid.*, A, 5, Jan. 2, 1862; "vessel depreciating", schooner *General Green* (11), *ibid.*, A, 16, May 21, 1862.

⁴¹ *Prize Cases in New York*, p. 401.

⁴² Mr. Jordan's report, *ibid.*, p. 4.

⁴³ *Ibid.*, p. 5.

tobacco to Liverpool. This was discovered by the appraisers appointed by the prize commissioners when they assorted the cargo according to the bills of lading.⁴⁴ In May, 1862, the matter was brought to the attention of the circuit court where the case was then pending, at the request of the prize commissioners and the marshal, who made application for an order for investigation. This was granted, and the matter was referred to a special commissioner before whom a thorough examination took place. The depositions were referred to Judge Nelson, who ordered the marshal to pay the value of the missing cargo or show cause why he should not; proceedings were begun against the marshal in the district court, and the supercargo was imprisoned.⁴⁵ Mr. Jordan, the Solicitor, concluded:

It is alleged (and I see no reason to doubt the truth of the allegation) that the marshal acted without corrupt inducement or improper intentions; but that he should have suffered himself to be imposed upon to such an extent, certainly seems to me very extraordinary.⁴⁶

An interesting quirk in the case is supplied by the assertion that the delay of the sale caused the captors to gain considerably because in the interval the prices of tobacco rose sharply.⁴⁷

The judicial proceedings leading to condemnation of prize property in New York was the third topic treated in the report.

⁴⁴ *P. C. R.*, A, 102. Barque *Hiawatha* (2) under date of June 4, 1862, deficiency of \$12,664.10 reported.

⁴⁵ Mr. Owen's testimony, *Prize Cases in New York*, p. 206; *P. C. R.*, A, 102, under the date of June 19, 1862, reports Mr. Owen in the circuit court examining witnesses, and the appointment of Mr. C. M. Wells commissioner to take testimony on the deficiency.

⁴⁶ *Prize Cases in New York*, p. 5.

⁴⁷ *Ibid.*, p. 5; the printed catalogue for the sale of the cargo of the *Hiawatha* (2) in the files of the court indicates the postponement of the sale from June 18, 1862, to July 9, 1862. A notation in ink on the first page shows the tremendous difference between the appraisal price and sale price. The cargo of tobacco was appraised at \$124,180.09 (May 13, 1862) and was sold for \$252,109.65, a difference of \$127,929.56. For rise in tobacco prices see *5th Annual Report*, Chamber of Commerce of the State of New York (1863), p. 135.

The work of the judges of the district and circuit courts was not discussed, as the Solicitor felt that it had not been expected of him that he embark on any inquiry concerning that aspect of prize court proceedings. However, the work of prize commissioners, marshal, district attorney, and counsel for captors in connection with the prosecution of cases was considered and approved.

I am of opinion, too, that a careful perusal of the evidence taken by me will not fail to convince any candid mind that every one of these officers has not only been faithful in the performance of these duties . . . but has performed them with great energy, ability and despatch.⁴⁸

There had been criticism of delay in the adjudication of prize cases. What was responsible? Considerable testimony was taken on this point, and both the district attorney, Mr. Smith, and the counsel for captors, Mr. Upton, delivered long discourses from which the Solicitor's report quoted liberally. Both had felt, and evidently the Solicitor agreed, that the delay had in large part occurred in the circuit court. In the district court cases had been dealt with quite expeditiously. The only cases there in which delay had occurred had been cases involving English claimants, represented by Mr. Charles Edwards. Both Mr. Upton and Mr. Smith felt that Mr. Edwards had been responsible for prolonging cases by following:

a litigious, technical, and, as I have often thought — though perhaps unjustly—a vexatious course . . . which has, in some instances, baffled all the efforts of court and counsel to make a summary disposition of prizes brought to this port.⁴⁹

The gravity of the charge of delay lies in the fact that delay entailed increased costs for storage and custody of prize goods; in some cases these exceeded the value of the property. A study

48 Mr. Jordan's report, *Prize Cases in New York*, p. 6.

49 Testimony of E. D. Smith, *Prize Cases in New York*, p. 332; cf. testimony of F. H. Upton, *ibid.*, p. 348 and Mr. Jordan's report, *ibid.*, p. 8.

of the papers of the cases libelled up to the date of the investigation shows that for the most part cases were decided in the district court within six months of the libel; the average was about four months. Only in eight cases did more than a year elapse before the final decree was handed down; of these two were cases in which Mr. Daniel Lord, Jr. contested the legality of the blockade,⁵⁰ and one was a case in which Mr. Edwards represented the claimants.⁵¹ In the latter case there is a pencil notation on the monition, "Mr. Edwards asks three weeks to answer," indicating postponement of the hearing. The other four were cases in which the vessels had been taken over by the government on appraisal prior to the decree,⁵² and in the eighth case, also, part of the cargo was taken by the government on appraisal and the vessel and remaining cargo were sold under an interlocutory decree; therefore there was no problem of mounting custody fees.⁵³

To avoid mounting charges, resort was sometimes had to interlocutory sales. To these, however, the court had under normal circumstances been opposed. As late as May, 1862, Judge Betts said,

If property is shown to be in a state of absolute wastage, or in such predicament that the shortest delay in disposing of it

50 Schooner *Mary Clinton* (15) libelled July 3, 1861, condemned in district court, October 26, 1863, and bark *Sally Magee* (16) libelled July 9, 1861, condemned in district court, August 1, 1863.

51 Schooner *Joseph H. Toone* (42) libelled Nov. 19, 1861, condemned Nov. 21, 1862, cf. monition in file under date of Dec. 10, 1861. The *Ezilda* (43) took just a little short of a year. It was also one of Mr. Edward's cases in which he asked for more time.

52 Steamer *Anna* (60), libelled March 5, 1862, condemned March 26, 1863, *Adm. Doc.*, vol. 17, p. 89; steamer *Nuestra Senora de Regla* (89) libelled June 9, 1862, restored June 20, 1863, *Adm. Doc.*, vol. 17, p. 187; steamer *Wilson* (132) and steamer *G. H. Smoot* (133) treated by the prize commissioners as one case, libelled Nov. 10, 1862 and condemned Dec. 20, 1863. *P. C. R.*, A, p. 226, *Adm. Doc.*, vol. 17, pp. 368-9.

53 Steamer *Stephen Hart* (54), libelled Feb. 18, 1862, condemned Dec. 9, 1863. *P. C. R.*, A, pp. 57 ff., *Adm. Doc.*, vol. 17, p. 187.

would reasonably lead to imminent peril of its loss or large deterioration, the court will undoubtedly interpose the aid of a summary sale, to avoid the destruction of the property condemned; but, without the pressure of such urgency, the regular course of proceedings will be left to govern the remedy in prize suits, the same as in other civil causes in admiralty.⁵⁴

As already noted, appeals to the circuit court often involved costly delays, because if a case were appealed, Judge Nelson, in the circuit court, opposed sale on a decree of condemnation in the district court and even interpreted as "entirely prospective" the first section of the act of March 3, 1863, which provided

that whenever any prize property shall be condemned, in any district of circuit court, etc., it shall be the duty of the court to order a sale thereof, and no appeal shall operate to prevent the making or execution of such order.⁵⁵

Of the forty-three English prize vessels libelled before March 3, 1863, and condemned in the district court at New York, twenty-three, more than half, were appealed to the circuit court.⁵⁶ Interlocutory sales were ordered in the circuit court only if the prize commissioners reported the goods were perishing. Another difficulty arose from the frequent objection in both the district and circuit courts by Mr. Edwards, proctor for the English claimants, to interlocutory sales.⁵⁷ One of the most interesting of these cases was that of the *Louisa Agnes* (27), a small schooner out of Halifax. According to her ship's papers she was bound for Baltimore, but correspondence found on board indicated that her destination was a Southern port, probably Wilmington, North Carolina. Her cargo was mainly composed of herrings, six hundred barrels of them with seventeen barrels of

⁵⁴ Blatchford, *Prize Cases*, pp. 166-7.

⁵⁵ *Op. cit.*, pp. 640-1.

⁵⁶ Only two were appealed subsequently.

⁵⁷ Cf. affidavit under date of Feb. 4, 1862, in file of case of schooner *Prince Leopold* (23), also affidavit under date of Jan. 14, 1862, in file of case of schooner *Aigburth* (26).

mackerel. The owner of her cargo had written two letters which are included in the files: one was addressed to the captain, ordering him to make a port in North Carolina, "although the cargo being but Herrings is best suited for Virginia;"⁵⁸ the other was addressed to a man in Wilmington, giving him instructions to sell the cargo and procure a return cargo of tar, pitch, rosin, and spirit of turpentine, "as much of latter as possible."⁵⁹ The schooner was captured off the coast of Virginia on September 9, 1861, and libelled in the New York court four days later. The counsel for captors appealed to the court for an order of appraisement, and sale, which was denied when "Mr. Edwards appeared with an array of affidavits from parties who swore that the fish was not perishing."⁶⁰ Three months later the Brooklyn Board of Health notified the prize commissioners that unless the fish were removed, they would have it condemned as a nuisance; and "then Mr. Edwards. . .didn't oppose" an order from the court for appraisement and sale was promptly secured. The report of the prize commissioners indicated that when the sale was finally held, on January 30, 1862, the price bid was so much lower than the appraisal of \$1,568 that the sale was adjourned. The next day a new appraisal set the value at \$308.50, but the fish sold then brought only \$105.10, an amount which barely covered the storage bill.⁶¹

One other question in regard to this phase of prize cases was revealed in the testimony, though it had not been made the basis of any charge. This was the question of bonding prize goods and turning them over to the claimants on their stipulation for the amount of the appraisal. This had been recognized proce-

⁵⁸ Letter of James A. Moran to Capt. Nicholson, Aug. 21, 1861, filed with ship's papers as letter F in case.

⁵⁹ Letter of James A. Moran to J. H. Flanner, Aug. 21, 1861, filed as letter E. in the same file.

⁶⁰ Testimony of Mr. Upton, *Prize Cases in New York*, p. 348.

⁶¹ Report of the prize commissioners filed under date of March 13, 1862, in the case of *Louisa Agnes* (27).

dures in prize cases, under certain conditions. Goods were delivered on bail prior to the hearing only with the consent of all parties, and after the hearing, only if there were no possible charge of false papers, or speciousness on the part of the crew in answering the standing interrogatories.⁶² The counsel for the captors had consistently opposed delivery on bail, and in the testimony two interesting incidents were disclosed.⁶³ In the case of the schooner *Lynchburg* (9), after the cargo had been released on order of the court, the prize commissioners discovered the appraisal had been too low. Considerable difficulty was encountered in securing the return of the cargo and the raising of the bond.⁶⁴ The case of the brig *Sarah Starr* (20) proved something of a boomerang for Captain Marshall, one of the members of the committee who had brought the original charges. He had been asked to appraise the vessel by Mr. Edwards, counsel for the claimant, and had appraised her at \$2,000. The day after the vessel had been released to the claimant on bond of \$2,000, she was sold for twice that amount.⁶⁵ It is only fair to add that no question of Captain Marshall's integrity was raised by any one concerned.

For the most part the criticism expressed in Mr. Draper's letters and in the letter signed by Mr. Grinnell had been directed against the administration of the sale of prize goods. This is the topic next dealt with in the report, what Mr. Jordan called "ministerial acts for its sale or other disposition according to court orders." Here the most specific charges had been made, and particulars had been given in regard to the following cases: the *Ann* (114), the *J. W. Wilder* (66), 1254 bushels of rice

⁶² Francis H. Upton, *The Law of Nations*, pp. 405-6; article on "Prize" by Judge Story in *Encyclopaedia Americana*.

⁶³ *Prize Cases in New York*, p. 355.

⁶⁴ Cf. papers in file of case of the schooner *Lynchburg* (9), *Adm. Doc.*, vol. 16, p. 334, under dates of June 20, 1861, July 2, 1861, July 9, 1861, August 31, 1861, Sept. 13, 1861, Oct. 18, 1861; also chapter III, note 58, *supra*.

⁶⁵ *Prize Cases in New York*, pp. 172, 260-1.

(113), the *Soledad Cos* (37) and the *Stettin* (102). In addition, there were more general charges that prize vessels and property had been sold at places other than those advertised, that sales had not been properly advertised, and that purchasers had not been given proper facilities to examine them.⁶⁶

Considerable testimony was taken in regard to these charges. Mr. John Draper himself stated that the complaint that prize goods had not been sold at the places advertised was an error. It had not been true of prize goods, and thus that charge was disposed of.⁶⁷ As to the handling of the sale, the testimony of several witnesses made it quite clear that sales were well attended, and that goods brought high prices and therefore must have been sufficiently advertised.⁶⁸ The one exception was the case of a steam saw mill on the schooner *Actor* (97). It had been appraised at \$6,000, but when the sale was held, the highest bid received was \$200 and the prize commissioners had accordingly withdrawn it from sale. In this case the difficulty was that there was no market for the mill in New York City, and the sale should have been advertised out of town. Some difficulty seems to have been experienced in getting the necessary authorizations, but they were finally secured, and at a subsequent sale the saw mill brought \$2,100.⁶⁹ The criticism of lack of proper facilities for the display of prize goods seems to have been of some validity. The testimony taken revealed that goods could rarely be seen before the day of sale, and as Mr. Jordan's report states,

they [the purchasers] often did purchase what they had not adequately examined, and the result was, not infrequent appli-

⁶⁶ Grinnell's letter printed in *Prize Cases in New York*, pp. 23-25.

⁶⁷ Testimony of John Draper, *op. cit.*, p. 130.

⁶⁸ Report of Mr. Jordan, *op. cit.*, p. 13.

⁶⁹ There is a typographical error in Mr. Jordan's report on the value of the steam saw mill. His report states the appraisal value was \$16,000; the appraisal in the file of the case of the schooner *Actor* (97) under date of July 7, 1862, shows the mill was appraised for \$6,000. See also marshal's return under date of Feb. 12, 1863.

cation by them for a reduction of the price bid—a circumstance which gave rise to considerable annoyance, and has probably had more to do with discrediting prize proceedings and sales than all other circumstances actually attending them.⁷⁰

The specific complaints in connection with the sale of the cargo of the steamer *Stettin* (102) were: 1) 905 bags of coffee bid at 27½c a pound had been delivered at 20½c a pound; 2) \$80,000 worth of goods had been struck off to Smith and Holmes, said to be purchasing for the warehousemen, Ward and Gore, but these goods were never taken or paid for and were put up for sale a second time at a loss of several thousand dollars. The papers throw interesting light on these charges. In the file of the court papers of the steamer *Stettin* (102) there is a document written in the same hand that kept the *Prize Commissioners' Register* labelled "Instructions to the auctioneers in regard to the terms of sale of the cargo of the Steamer *Stettin*, November 7, 1862." In these instructions the prize commissioners note that the cargo had been badly damaged by water having been turned in upon it by the crew, but that they have been unable to provide proper examination. They conclude, and state that the marshal concurred, that the cost of preparing the goods for proper display was not warranted, and they therefore request the auctioneer to announce the condition of the goods and furthermore to announce "no reclamation." These words "no reclamation" are also printed on the cover of the catalogue of the sale.⁷¹ However, the court did award a reclamation upon a quantity of shirting bought in this sale and found to be badly damaged.⁷²

The cargo must have been considerably damaged. Ward and Gore's bill includes a charge of \$25 for drying and repiling 281

⁷⁰ *Prize Cases in New York*, p. 14.

⁷¹ Catalogue in file of case of *Stettin* (102), *Adm. Doc.*, vol. 17, p. 180.

⁷² Papers on the rebate for damaged shirting allowed by the court in the file of the *Stettin* (102), *Adm. Doc.*, vol. 17, 180.

bags of wet coffee.⁷³ The catalogue of the cargo for sale in the file lists the coffee as "musty and damaged;" the figure 880 is substituted for 905 as the number of bags of coffee; the correction in red ink is in the same hand as the appraisal prices noted opposite the individual items. The appraisal price for the coffee had been 20½c a pound, and the coffee was delivered at this price, seven cents less than the price bid.

However, the coffee was subsequently resold by the purchaser at 29c a pound to Sturges, Bennet & Co., coffee merchants; furthermore, on a second weighing, for the sale to Sturges, Bennet & Co., the coffee weighed almost 9,000 pounds more than originally determined. The first weighing had been done at the request of the marshal, and the receipt of the weighmaster had been enclosed by the deputy marshal in a note to the auctioneer, asking him to calculate the amount due on the basis of the return and to deliver the cargo at the appraisal price, stating that the district attorney, the prize commissioners, and the counsel for captors had assented.⁷⁴ At the hearing, the counsel for captors could not remember whether he had assented;⁷⁵ the district attorney declared he had never consented;⁷⁶ one of the prize commissioners, Mr. Owen, had never been consulted,⁷⁷ and the second, Mr. Elliott, said he agreed after the marshal had requested him to do so on several occasions and because he knew the bad condition of the cargo.⁷⁸ The comment of the solicitor appears justified.

Taking all the circumstances together, I must say that I think the case has a bad appearance. . . . Of the officials, the marshal seems to be the person chiefly responsible; and although the

⁷³ Attached to the marshal's return on the sale of the cargo, *ibid.*

⁷⁴ Exhibits printed in *Prize Cases in New York*, pp. 539-41, and p. 534.

⁷⁵ Testimony, *op. cit.*, p. 360.

⁷⁶ *Ibid.*, p. 316.

⁷⁷ *Ibid.*, p. 237.

⁷⁸ *Ibid.*, p. 235.

circumstances do not, as I conceive, warrant any charge of corruption or willful misconduct against him, I do think they show a want of proper care and vigilance on his part. And further, I think they show, in a clear light, the great impropriety of making any such reductions in price as were made in this and other cases, otherwise than through the intervention of the court, and proper proceedings therefor.⁷⁹

The second charge, relating to the resale of the portion of the cargo of the *Stettin* (102) bought by Smith and Holmes, was not satisfactorily cleared up. The purchasers had not made the required 10 per cent deposit, a fact in itself not unusual, for evidently it was customary to ignore the requirement. Here, it seems, the responsibility rested with the auctioneer. In his testimony, Mr. Simeon Draper stated:

At ordinary sales the auctioneer is always at liberty to call for a deposit if he has any doubt as to the purchaser . . . but where persons are known that is not done.⁸⁰

In this case he obviously did not know the purchasers, and yet no deposit was taken. The goods were not claimed, and a second sale was ordered, without any effort on the part of the marshal to enforce the sale, although in an accidental meeting with the auctioneers Smith had claimed he had been buying on behalf of Ward and Gore, an assertion which they denied. At the second sale these goods were resold for \$78,000, a loss of \$2,000 as against the original bid. A further complication arose from the fact that at this second sale Ward and Gore purchased some of the goods for about \$4,000, but again delivery was not effected. Ward and Gore wanted to complete the sale; their storage bill on the cargo had not yet been paid; they nevertheless tendered to the auctioneer a deposit of \$2,000. However, by the time they did so, the auctioneer refused the deposit on the ground that the third sale had been ordered by the marshal. At the third sale Ward and Gore were refused opportunity to

⁷⁹ *Ibid.*, p. 17.

⁸⁰ *Ibid.*, p. 83.

bid, and the goods were let go at a loss of \$1,300. The reason is not clear. Ward and Gore refused to appear before the Solicitor, though they were represented by counsel; Smith, whose name is said really to have been Coles, also failed to appear. There is considerable confused testimony on the matter, and unfortunately the prize court papers offer no clarification. The Solicitor's finding was that the marshal should have inquired into the details of the case and enforced the original sale if practicable. He concluded: "My impression is that that sale [the third one] was the result of some unexplained difficulty between the marshal and Ward and Gore."⁸¹

Another case that was not clearly explained was that of 613 bags of coffee forming part of the cargo of the schooner *J. W. Wilder* (66). This coffee had been bid in at 21 1/2c a pound, but was not taken by the purchaser; the coffee was then delivered at the request of the marshal to a Mr. Noyes at 19c a pound.⁸² This may have been simply another case in which, on closer inspection, damage was revealed; the cargo book of the prize commissioners has a note next to the coffee, "part damaged;" but nothing was established in the testimony; the prize commissioners did not remember the case, and the counsel for captors knew nothing of it.⁸³

The other specific cases, however, were more fully explained. One was that of the 1254 bushels of rice (113) which were bought by Ward and Gore. It had been stated in Mr. Grinnell's letter that the rice had been sold at \$2.25 per bag, but that Ward and Gore had been allowed to take it at \$1.67 per bag. The testimony revealed that the catalogue had represented the rice as in bags containing a little more than 2 bushels to the bag, that Ward and Gore thought they had bid \$2.25 per bag, but that actually it was auctioned by the bushel, and that their bid had been taken at \$2.25 per bushel. They were allowed to

⁸¹ *Ibid.*, p. 15.

⁸² Exhibit No. 9, *ibid.*, p. 565.

⁸³ *Ibid.*, pp. 238, 361.

take it at \$1.67 per bushel, 2c per bushel more than the appraisal, and more than \$3.25 per bag.⁸⁴ The charge of false return of weight of the coffee from the cargo of the schooner *Solidad Cos* (37) was also cleared up on testimony that the bags were of various weights, although the returns of the weigher showed an average weight per bag.⁸⁵

The case that had been used as the spearhead of Mr. Draper's attack, and the one that figured most prominently in Mr. Grinnell's charges, was that of the coffee and tea from the cargo of the steamer *Ann* (114). This was a case of reclamation. The sale of the cargo took place on November 29, 1862; Ward and Gore purchased 293 chests of tea at 44½c a pound and 310 bags of coffee at 30c a pound. They complained of the damaged condition of the goods, and Mr. Elliot, one of the prize commissioners, directed the weighers to weigh liberally, which they did, allowing 3 pounds per chest on the tea and ten pounds per bag on the coffee. On December 16th, 1862, Ward and Gore appealed to the court for a reduction of 10½c per pound on the tea and 10c per pound on the coffee. Their application was referred to Mr. Owen, one of the prize commissioners, for report. Affidavits were submitted and depositions made that the coffee and tea were not worth the price bid, and on the basis of these Mr. Owen recommended the reduction. In the meantime, on December 12th, the tea had been sold at 45c per pound, less 2½% tare and 7c lighterage per chest, and less on 12 of the chests an additional allowance of 7c per pound. On January 6th, the coffee was sold at 26c per pound, less 3 per cent for cash and 5c a bag lighterage, the sellers paying ¼ per cent commission. When the district attorney was informed of the reclamation and the subsequent sales, he wrote to the various people concerned, interviewed Ward and Gore, and urged that they consent to reopening the order for further inquiry. Although they insisted that the order had been right, they consented to its being opened

⁸⁴ *Ibid.*, pp. 146-7.

⁸⁵ *Ibid.*, pp. 257-9, 18.

for further inquiry, and on the application of the district attorney it was reopened. The Solicitor remarked in his report that much evidence had been given "tending to show that the tea and coffee were not worth the price bid by Ward and Gore," yet he was not satisfied with the way the case had been conducted.

The evidence taken, however, if uncontradicted, would seem to justify Mr. Owen's report. But if any error was committed by Mr. Owen, it cannot be regarded as a very grave one, and was unquestionably one of judgment merely; for if there is any one point upon which all parties to the investigation seem agreed, it is to the unimpeachable integrity of this gentleman.⁸⁶

A sequel to the story lies in the files of the case. The statement of Mr. Draper that "the terms of the sale were explicit that there would be no reductions"⁸⁷ is not borne out by the catalogue of the cargo of the steamer *Ann* (114).⁸⁸ No terms were printed in this catalogue. The items were listed as "293 chests Congou tea" and "310 bags Rio coffee, a portion slightly damaged," and no mention was made of the damaged condition of the tea, as was even admitted in an affidavit submitted by Mr. O'Donohue on behalf of the Drapers.⁸⁹

Furthermore, the whole question of the reclamation had been referred back to Mr. Owen for report after the close of the investigation. His report of November 14, 1863, is in the files, including the affidavits submitted by Ward and Gore and the minutes and testimony of the examination. This time the hearing was attended as well by E. Delafield Smith, the district attorney, J. W. Thompson, the deputy marshal, and Erastus C.

⁸⁶ *Ibid.*, pp. 18-19.

⁸⁷ *Ibid.*, p. 120.

⁸⁸ In file of case.

⁸⁹ "that said tea was damaged only by age, and to an extent not to exceed three cents per pound in value." Exhibit D, *Prize Cases in New York*, p. 39.

Benedict, attorney for Ward and Gore. Mr. Owen reported that he had reexamined the petitions and affidavits, had heard the testimony on the second reference, and had again granted the petition for reduction. He reported that the printed catalogue had not stated that there would be no reclamation; the tea had not been described as damaged, and the coffee had been described as partly damaged, whereas both were in bad condition. Ward and Gore had been obliged to sell, and had sold, at less than what they had bid. And if they were compelled to pay the full amount, they would lose on the purchase the sum of \$2,671.72, viz. \$410.45 on the tea and \$2,261.27 on the coffee. Judge Betts, in a three-page written explanation, approved the report and ordered the reclamation, December 14, 1863.⁹⁰ Considering the reputations of Mr. Owen and of Judge Betts, the reclamation in this case must have been justified.

Other cases of reclamation were mentioned in testimony and exhibits.⁹¹ The Solicitor concluded:

In a few unimportant cases, they were disposed of by the officers without application to the court for its sanction, but in most of them, and in all important ones, such application was made. . . . I may say, however, that, in my opinion, it has not been made to appear that in any of them, whether through the instrumentality of the court or otherwise, has any unjust allowance been made, unless in one case. . . .⁹²

The one case was that of the coffee and tea on the steamer *Ann*.

As for Ward and Gore, the Drapers were under the impression that they had bought considerably at the prize sales; however, on going through their books they had found that Ward and Gore had purchased at six sales and in only three cases in any quantity, 1254 bushels of rice (113), *Stettin* (102), and *Ann* (114).⁹³

⁹⁰ Cf. paper in file of case of steamer *Ann* (114), under that date.

⁹¹ *Prize Cases in New York*, pp. 139-140, also exhibit no. 37, pp. 573-4.

⁹² *Ibid.*, p. 18.

⁹³ Testimony of John Draper, *ibid.*, p. 145; exhibit no. 50, *ibid.*, pp. 375-6.

In concluding the section on the survey of ministerial acts for sale of prize goods, Mr. Jordan stated :

I should ill perform my duty if I neglected to say, that whoever shall endeavor to satisfy himself as to the proper inference to be drawn from the existence of such irregularities as those which have just been stated and discussed, must always bear in mind that they have occurred in the course of proceedings of great magnitude, of a character wholly novel to the actors in them, of a most perplexing description, involving the disposition of property of immense value, and presenting the strongest temptation to peculation. I do not think that, with the exception of the withdrawal of so large a portion of the cargo of the *Hiawatha* these irregularities have been anything more than might reasonably have been expected to attend the disposition of so large an amount of property under any ordinary circumstances.⁹⁴

There remains the question of the custody and care of the proceeds of prize sales, with which was closely involved the question of the fees and costs paid out of these proceeds. Although the written charges in the Draper and Grinnell letters had dealt mainly with the question of alleged fraud in connection with the sale of prize goods, there had also been a charge of corruption on the part of some of the court officials and the implied charge of personal gain. The whole question of high costs in the New York prize court was stressed also in the letter of the Secretary of the Navy to the House of Representatives, which revealed that the costs of procedure in New York were the highest in any of the courts reported. He stated the "percentage of expenses to sales" as: Boston—5.83; New York—15.39; Philadelphia—14.09; Key West—8.09.⁹⁵

The charges of corruption had been disproven, and the instances alleged fully explained away.⁹⁶ Testimony taken on the

⁹⁴ *Ibid.*, p. 19.

⁹⁵ Executive Document No. 73, House of Representatives, 37th Cong., 2nd Sess., printed in *Prize Cases in New York*, pp. 423.

⁹⁶ Cf. footnotes 34 and 35 *supra*.

question of fees revealed that the fees of the marshal and the clerk of the court were fixed by law, the bills of the district attorney, the counsel for the captors, and the prize commissioners were taxed and allowed by the court. The Solicitor's comment here was:

Whether that allowance has been, in all instances, entirely proper, I am not prepared to say. It would evidently be an almost endless undertaking to attempt to determine this point, since, from the nature of the case, there can be no fixed rule by which the compensation can be measured.⁹⁷

Furthermore the annual official incomes of all those officials, with the exception of that of the counsel for the captors, were fixed by law. All receipts beyond that amount had to be turned over to the Treasury. It is true that quite frequently the district attorney's bill was drastically reduced by the court, but the fact of the matter is that it was the bill as reduced and not the original that is charged against the proceeds. An interesting document in the prize commissioners' file indicates that the prize commissioners did not think that they were overpaid. This is a report to the district court in regard to salary and expenses of the prize commissioners for the period April 4, 1863, to December 31, 1863. On the basis of \$3000 a year, a prize commissioner would be allowed for that fraction of the year, \$2225. His actual receipts during that period amounted to \$2219.60; furthermore, he had to bear his own expenses for clerks, rent, fuel, and stationery.⁹⁸ The initial appointment of the prize commissioners by the court had authorized the employment of a clerk.⁹⁹ There were no funds from which to defray these expenses except from the proceeds. When, early in the term of their appointment, the prize commissioners had written to the Secretary of the Interior asking for funds with which to procure

⁹⁷ *Prize Cases in New York*, p. 20.

⁹⁸ Document A, Prize Commissioners' file.

⁹⁹ *MSS Rough Minute Book*, U. S. District Court, Southern District of New York, vol. 14, p. 622.

a safe, they had been informed that the department could not comply with this request since the law did not recognize them as government officials.¹⁰⁰

The bills of the counsel for the captors were taxed by the court and roughly followed the rates of compensation proposed by the Secretary of the Navy in his letter of appointment of September 6, 1862.¹⁰¹ In the memorandum submitted by the counsel for the captors to the Solicitor indicating the amount of his bills and the amount that would have been granted on the basis of the Secretary's recommendation, there is an excess of \$1,437.77 in receipts for a total of 44 cases, for which he had received the sum of \$12,228.¹⁰² The Solicitor stated:

Whether the appointment of a counsel for the captors was required is a point which it does not appear to me necessary to consider, since, so far as the past is concerned, such appointment was authorized by law; and as to the future, the power of appointment has been taken away, except in cases where all will admit its propriety. There seems to be a general concurrence, however, in the opinion that the gentleman who acted in that capacity did so with great ability and assiduity, and that the services rendered by him were very valuable. The charge that he had received a sum of money in consideration of not opposing a certain reclamation was shown to be founded in misapprehension.¹⁰³

¹⁰⁰ In the manuscript correspondence of the prize commissioner, filed under date of August 20, 1861.

¹⁰¹ Letter of Mr. Welles to F. H. Upton, *MSS General Letter Book*, vol. 69, p. 288, U. S. Navy Department Archives, also printed in *Prize Cases in New York*, p. 568.

¹⁰² Exhibit No. 31, *ibid.*, p. 569. Mr. Upton's explanation was that "the terms of that letter have simply been used by the court as an aid in exercising its discretion and authority in taxing those costs under the provisions of the Act of March 25, 1862." Mr. Upton's Brief, *ibid.*, p. 42. The construction of the phrase "net amount paid into the treasury" was the difficulty. Cf. Chapter III, note 89, *supra*.

¹⁰³ *Prize Cases in New York*, pp. 20-21, also testimony of Joseph H. Gray, *ibid.*, p. 254.

The amounts that the marshal disbursed for the care, custody, and sale of the vessel and cargo were not subject to law but were left to the discretion of the marshal. Here both testimony and the bills on file indicate that the charges were perhaps unduly high. The criticism of the warehouses as inaccessible, dark, and inadequate was proven unfounded.¹⁰⁴ The marshal stated at the hearing that the rates of storage, as compared with the ordinary rates, were "about double; in some cases a little over double." He attributed the high rates "to the large quantity of room required to store, and the display we must make on the day of the sale," but felt he had made the charges reasonable by cutting down the bills submitted to him.¹⁰⁵ A comparison of the charges on the itemized bills of Ward and Gore with the customary charges for storage mentioned by witnesses at the hearing indicates that the former were indeed uniformly higher.¹⁰⁶ On the other hand, the marshal's reduction of the bills is borne out by a study of the original bills. For example, in the case of the *J. W. Wilder* (66), there is marked on the bill. "whole bill reduced 35% less per agreement;" in the case of the steamer *Ann*, "less 15% per agreement." Not all bills were so reduced, but many were. The Solicitor concluded:

It is true that it appears that more space and labor appear to be required for these goods than for goods stored under ordinary circumstances, and it is also true that much delay often attends the payment of the warehouseman's bills. It could not be expected that these goods should be stored at

¹⁰⁴ Solicitor's report, *ibid.*, p. 4.

¹⁰⁵ Testimony of the marshal, *ibid.*, p. 401.

¹⁰⁶ Mr. Arnold of Sturges, Bennet & Co., stated "the customary charge of storage on Rio coffee was three cents per bag per month, and the same for what is called labor," *ibid.*, p. 273. In Ward & Gore's bill for storage of coffee in the case of the *Stettin* (102), the charge was five and five. In the same bill they charged ten and ten per chest of tea, and that was three times the amount quoted by Frank Squire, a warehouseman who testified as the hearings, *ibid.*, p. 334.

ordinary rates. But the charges have not in all cases been limited to double those ordinarily allowed. . . . The refusal of Messrs. Ward & Gore to appear and give their testimony . . . placed it beyond my power to satisfy myself in reference to these charges. . . . I think the bills of this character should hereafter undergo a more careful scrutiny. . . .¹⁰⁷

Insurance rates also were deemed very high. "I am not satisfied that the payment of so high rates was necessary," said the Solicitor.¹⁰⁸ The third item in the marshal's disbursements was the auctioneer's commission of 2½ per cent. A study of the amount of commissions received by the auctioneer for the sale of prize goods to December, 1862, reveals that the Drapers had received a total of \$30,801.35.¹⁰⁹ This sum is almost as much as the amounts legally allowed to the prize commissioners, the district attorney, the marshal, and the counsel for captors.

Mr. Draper had evidently been quite interested in securing the position. Before the act of March 25, 1862, which established the procedure for prize sales, there had been some cases of perishable cargo sold by the prize commissioners on order of the court. In one of these cases, the *Sarah Starr* (20), Mr. Owen said:

there was a strenuous effort made on the part of the district attorney to have Mr. Thompson [the deputy marshal] appointed special commissioner to make the sale . . . I don't know, but I inquired of the district attorney why they were making that movement. I understood him to say he was forced to make that application by the united requests of Messrs. Grinnel, Draper, and several other persons of high political standing . . .¹¹⁰

The case was argued at length, and the judge directed the sale be made by the prize commissioners. After the passage of

¹⁰⁷ Solicitor's report, *ibid.*, p. 22.

¹⁰⁸ *Loc. cit.*

¹⁰⁹ Statement prepared by Simeon Draper, *ibid.*, pp. 31-2.

¹¹⁰ Testimony of Mr. Owen, *ibid.*, p. 203, substantiated by the testimony of E. D. Smith, *ibid.*, p. 329.

the act of March 25, 1862, the marshal was entrusted with the sale, and Mr. Draper sold all the prize goods for the marshal.¹¹¹ The marshal stated he had employed Mr. Draper as auctioneer "at the instance of gentlemen of such high position in the confidence of the Government, that, if I had desired to do so (which I did not) I should not have felt at liberty to disregard the request."¹¹² Considering that the work of the auctioneer was restricted merely to calling the goods on the day of the sale, making out the bills, and taking the money for them, especially since the money remained in his personal bank account for long periods, the job was very lucrative.

In the summer of 1862 the Massachusetts prize court became quite exercised by the $2\frac{1}{2}$ per cent commission of the auctioneer in Massachusetts, and Richard Henry Dana, Jr., then district attorney, wrote a strong letter to Secretary Welles about what he considered the exorbitant fee.¹¹³ The result in New York was that Secretary Welles wrote to E. D. Smith, the district attorney in New York, asking him to make sure that the marshal was not getting a kickback from the auctioneer and followed it through with a protest directing the district attorney and the counsel for the captors to protest the auctioneer's commission of $2\frac{1}{2}$ per cent. It is small wonder that the Drapers were so upset when faced with a cut in their commissions and that they did everything possible to stave off the calamity. In September of 1862 Mr. Draper supplied the district attorney with a statement, signed by "numbers of the most respectable merchants and underwriters of this city," including Mr. Grinnell, Mr. Taylor, and Mr. Minturn, all of whom later became

¹¹¹ *Ibid.*, p. 72.

¹¹² Copy of letter of Robert Murray to E. D. Smith, Sept. 26, 1862. *Miscellaneous Prize Matters*, 1861-1871, No. 109. U. S. Navy Department Archives.

¹¹³ Cf. Chapter III, pp. 81-82, *supra*; 2 Sprague, 160; letter of Aug. 20, 1862, *Miscellaneous Prize Matters*, 1861-71, No. 67. U. S. Navy Department Archives.

members of the "committee" associated with the investigation. The statement set forth:

We, the undersigned, merchants and underwriters, certify that two and one-half of one per cent is the regular commission for sales of merchandise at auction without guarantee.¹¹⁴

Nevertheless the commission of 2½ per cent was opposed by the Secretary of the Navy and by the Solicitor.¹¹⁵ At the request of the counsel for the captors, Judge Betts refused to allow this amount from November 24, 1862, on, and reduced the auctioneer's commission to ½ per cent. Mr. Draper, who had already deducted his 2½ per cent. from the proceeds of the sale before he turned this over to the marshal, refused to surrender the difference.¹¹⁶ Subsequently, the commission was reduced by act of Congress to ¼ per cent, but Mr. Draper did not accept the position under that arrangement.¹¹⁷

A study of the testimony and the corroborative evidence of the papers clearly indicates that the investigation was carried out honestly and fairly by the Solicitor. Every opportunity was given to Mr. Draper and to Mr. Grinnell to ferret out the proof of their assertions and charges. They had the service of distinguished counsel to examine their witnesses and to cross-examine the officials of the prize court; they were allowed to produce any witnesses they chose.

Yet the investigation proved to be a boomerang. The charges of bribery, graft, and corruption against the officers of the New York prize court were obviously unfounded in fact; they were repudiated even by the committee's counsel in his final brief. The particular cases cited were for the most part cleared up by explanation. An exception is the case of the cargo of the *Stettin*

114 Exhibit No. 52, *Prize Cases in New York*, 577.

115 Testimony of Mr. Upton, *ibid.*, p. 353.

116 Letter of Simeon Draper to Robert Murray, Feb. 4, 1863, exhibit No. 14, *ibid.*, p. 580.

117 12 Stat. 759, sec. 3.

(102), and that chiefly because of the unwillingness of Ward and Gore, the warehousemen, to testify. An interesting sidelight on the whole situation is afforded by the disposition of the *Stettin* (102) itself. The papers show that the steamer *Stettin* (102) was officially appraised by Moses Grinnell, the auctioneer's chief ally, at \$82,500. The Navy Department wanted the vessel but demanded a new appraisal. In the interest of impartiality a board of three was set up, consisting of Benjamin F. Delano, and B. F. Garvin, and Robert Mackie, representative of Lloyd's and claimant on their behalf of the vessel. The two officials of the Navy Yard agreed on a value of \$50,000, at which figure the steamer was taken by the Navy; Mr. Mackie dissented, appraising the vessel at \$65,000, a value, however, substantially below that originally set by Mr. Grinnell.¹¹⁸ The case, the handling of which the Solicitor found most reprehensible, was that of the reclamation on part of the cargo of the *Ann* (114). The handling of this case was, however, upheld by the court six months after the close of the investigation.¹¹⁹ It was Mr. Draper and Mr. Grinnell, who by his representations to the marshal had helped Mr. Draper originally to secure the position as auctioneer, and who later backed his attempt to prevent the cut in his commission, that came off worst at the hearing. Mr. Minturn, a member of Mr. Grinnell's so-called "committee" (which had never met) and one of the signers of the statement supporting the 2½ per cent commission, brother-in-law and formerly a partner of Grinnell's in Grinnell, Minturn & Company, said he had never seen the paper (the letter of the committee), "never heard it read, and know nothing of its statements, only by hearsay;" he had been

¹¹⁸ Cf. court papers in the file of the steamer *Stettin* (102), *Adm. Doc.*, vol. 17, p. 180. Mr. Grinnell charged \$250 for this appraisal. The amount was considered high at the hearing, but Mr. Grinnell disclaimed any personal profit, testifying that he had paid the engineer who had accompanied him and had given the balance away to a "company of soldiers". *Prize Cases in New York*, pp. 411-2.

¹¹⁹ Cf. page 120, *supra*.

asked by Mr. Draper if he would sign the letter to the Solicitor and had done so to oblige him. Furthermore, in answer to the question about a fair commission for an auctioneer in this type of case, he replied: "If there was no agreement about it, I should say he would be justified in charging two and a half per cent, but there ought to be an agreement under such circumstances." ¹²⁰ Mr. Redding, manager of the fire insurance and underwriting business in Mr. Grinnell's Sun Insurance Company, was called by the committee to testify about insurance rates. Questioned about the auctioneer's commission, he thought that $\frac{3}{4}$ per cent, as suggested by Mr. Arnold, of Sturges, Bennet & Company, was sufficient and in fact thought $2\frac{1}{2}$ per cent was "pretty strong." ¹²¹

It seems fairly clear that Mr. Upton's explanation was correct, that Mr. Draper was to a great extent responsible for the rumors and the criticism because of the threat to his commissions and was trying to get back at those whom he held to be responsible. His charges of dishonesty were not proven, but he did succeed in ruining the reputation of the New York prize court as far as the captors were concerned, for there was an immediate decline in the number of prizes sent to New York, both absolutely and relative to the total number of prizes adjudicated.

¹²⁰ Testimony of Mr. Minturn, *Prize Cases in New York*, p. 403.

¹²¹ *Ibid.*, p. 302. Mr. Arnold testified that $\frac{3}{4}$ per cent, plus the state tax of $\frac{1}{2}$ per cent, was the auctioneer's customary charge, *ibid.*, p. 275.

CHAPTER V

THE DISPOSITION OF PRIZE CASES

THE cases recorded in the *Prize Commissioners' Register* for the New York prize court (Southern District of New York) number altogether one hundred and ninety-six. One additional case, that of part of the cargo of the British steamer *Pevensey* (197), though not entered in the register, was tried as a prize case. It has therefore been included in the microfilm reproduction of the papers.¹ It should be noted, however, that sixteen of these cases, although they appear on the *Prize Commissioners' Register*, were actually not prize cases at all.

Of these sixteen, nine were confiscation cases.² They resulted from attempts made in the early days of the Civil War to take advantage of acts of Congress which authorized under certain conditions the sequestration of money and property found in the North but "owned by citizens of the so-called Confederate

Note: Numerals in parentheses refer to the cases in the microfilm of the *New York Prize Court Papers (1861-1865)*.

1 (197) *Admiralty Docket*, vol. 18, p. 376.

2 (29) 5000 bags of Coffee on *Ann Bowen*, *P. C. R.*, A, 29, *Admiralty Docket*, vol. 16, p. 459.

(30) Bank of State of New York, *P. C. R.*, A, 30, *Adm. Doc.*, vol. 16, p. 458.

(31) Package marked AB in the Park Bank containing certificates of deposit for \$42,405, *P. C. R.*, A, 315, *Adm. Doc.*, vol. 16, p. 444.

(33) 707 casks of wine in storage at # 4 Washington Street, *P. C. R.*, A, 33, *Adm. Doc.*, vol. 16, p. 456.

(34) Trotting mare Flora Temple, *P. C. R.*, A, 34, *Adm. Doc.*, vol. 16, p. 449.

(35) Money, drafts, stocks, and other property owned by citizens of so-called Confederate states in hands of Brighan & Parson, *P. C. R.*, A, 35, *Adm. Doc.*, Vol. 16, p. 488.

(38) Bonds, *P. C. R.*, A, 38, *Adm. Doc.*, vol. 16, p. 465.

(39) 300 casks of wine, *P. C. R.*, A, 39, *Adm. Doc.*, vol. 16, p. 460.

(40) \$30,000 in hands of Peter Campbell & Co. belonging to John R. Milner, *P. C. R.*, A, 40, *Adm. Doc.*, vol. 16, p. 471.

States.”³ However, in the mid-nineteenth century, liberal governments tended, in practice as well as in theory, to conceive of their powers as limited by the rights of men; accordingly, the lives and property of individuals were not treated as existing primarily for the benefit of the state. On September 21, 1861, “in order to prevent seizures of property belonging to the citizens of insurrectionary States, not warranted by the Acts of Congress relating to that subject,” Secretary Seward addressed a circular letter to United States marshals and district attorneys. Mr. Seward explained that the confiscation acts of July 13, 1861, and August 6, 1861, were to be construed as limited to property used in furtherance of the insurrection only.

It will be seen from an inspection of the Acts of Congress, that no property is confiscated or subject to forfeiture except such as in transit, or provided for transit, to and from insurrectionary States or used for the promotion of the insurrection. Real estate, bonds, promissory notes, money on deposit, and the like [such as the *Florá Temple*, a trotting mare, libelled in the New York prize court⁴] are therefore not subject to seizure or confiscation in the absence of evidence of such unlawful use.⁵

All nine of these cases were dismissed.

Six other cases entered in the *Prize Commissioners' Register* were not prize cases but cases of salvage and were dealt with accordingly. Five of these were cases of bales of cotton

³ 12 Stat. 257, 319.

⁴ (34) Trotting mare *Flora Temple*, *P. C. R.*, A, 34, *Adm. Doc.*, vol. 16, p. 449.

⁵ 5 Gt. Brit. Parl. Papers—*Correspondence relating to the Civil War in the United States of North America* (1862), North America No. 1, inclosure No. 95, p. 85. An interesting statement, similar in tone, is the following quotation from the Act of March 12, 1863: “The government recognized to the fullest extent the humane maxims of the modern law of nations, which exempt private or noncombatant enemies from capture as booty of war”, as quoted in Moore, *A Digest of International Law*, VII, section 1150, p. 289.

picked up at sea in the last year of the war.⁶ The decision in case (190), that of *Fifteen bales of cotton* picked up at sea on December 5, 1864, at 34.13° North Latitude and 77.10° West Longitude, is typical; the decree stated that the case "was not entertained by the court as a prize suit but in the nature of a salvage suit by government vessels reclaiming at sea property derelict from vessels which had violated a blockaded port and was brought into court and condemned in that character."⁷ The sixth was a case of military salvage, arising from a case of recapture. The schooner *Mary Alice* (21), owned in New York, had been captured on a return voyage from Porto Rico by the Confederate privateer, the *Dixie*, on July 25, 1861. While sailing under orders of a Confederate prize-master and crew from the *Dixie*, she had been recaptured by a Union frigate not quite two weeks later, before she had been able to run the blockade into a Confederate port. Then, under a Union prize-master, she had been sent to New York, where Mr. Upton, counsel for the captors, filed the libel against her.⁸ The prize court ordered the vessel and its cargo of 210 hogsheads of sugar restored to their original owners, Sturges and Company of New York, on payment to the captors of military salvage, that is, one-eighth of the appraisal value of the vessel and cargo and the "fees, costs, and expenses of these proceedings accruing and due to the Prize Commissioners, the Proctor for the Libellants, and the Clerk of the Court."⁹ Three other prizes brought before the New York court were recaptures, but were for the most part treated as prizes.¹⁰

6 (180) 40 bales of cotton, *P. C. R.*, B, 40, *Adm. Doc.*, vol. 18, p. 354.

(182) 35 bales of cotton and 2 half bales of cotton, *P. C. R.*, B, 43, *Adm. Doc.*, vol. 18, p. 452.

(183) 29 bales of cotton, *P. C. R.*, B, 44, *Adm. Doc.*, vol. 18, p. 469.

(192) 27 bales of cotton, *P. C. R.*, B, 58, *Adm. Doc.*, vol. 18, p. 521.

7 Filed October 6, 1865, in folder of case (190).

8 (21) *P. C. R.*, A, 21, *Am. Doc.*, vol. 16, p. 400.

9 Decree filed August 17, 1863, in folder of case (21).

10 The brig *Henry C. Brooks* (28) was libelled as a prize, but in the course of the suit it was allowed that she was "the property of loyal owners,

The sixteenth case which, though included in the *Register*, was not considered a prize case, was unique. This is the well known case of the schooner *Savannah* (12).¹¹ A privateer out of Charleston, she was seized on June 3, 1861. It was her first day at sea, but she had already captured the *Joseph*, a Union vessel.¹² She was armed with "one gun, to wit, an eighteen pounder mounted upon her deck and with certain other weapons, to wit, muskets, pistols, and cutlasses, and was laden also with ammunition therefor."¹³ She was libelled as a "privateer" and accordingly the case was not tried on the prize calendar.¹⁴ The South became tremendously excited over the piracy charge, with its implication that the officers and crew would be hanged, and threatened dire reprisals. The papers of the prize court,

citizens of the United States, and had been and was recaptured from the unlawful possession of the enemy, by whom she was illegally employed without the knowledge, privity, or consent of the owners thereof, and is, therefore, to be proceeded against in all respects as though the naval captors herein had filed a separate libel against the vessel for the military salvage of said vessel allowed by law." She was restored to her original owners on payment of military salvage but her cargo was condemned as enemy property. (Blatchford, *Prize Cases*, p. 99.)

The *Lizzie Weston* (67), a small schooner owned in New Haven, had been captured by the Confederates and condemned in the Confederate prize court in Florida (deposition of owner and supercargo, L. H. Golden, filed February 19, 1862, in case). Her purchasers used her to run the blockade, and she was recaptured in the Gulf of Mexico in January of 1862, carrying a cargo of cotton. Vessel and cargo were condemned as prize in the New York court. The original owner sought to reopen the case. The vessel was restored on payment of \$100 salvage, but the claim for a compensation of \$12,650 from the proceeds of the cargo was denied because the court stated it had no authority "to open a decree after the expiration of the term or session in which it was rendered." (Blatchford, *Prize Cases*, p. 265).

In the third case, the *Hattie* (170), both vessel and cargo were condemned as lawful prize but the decree as to the vessel was reopened and the vessel was restored on payment of military salvage. The cargo was condemned as enemy property (Blatchford, *Prize Cases*, p. 579).

11 (12) *P. C. R.*, A, 12, *Adm. Doc.*, vol. 16, p. 350.

12 Robinson, *The Confederate Privateers*, p. 52.

13 Schooner *Savannah* (12), libel filed June 21, 1861.

14 *P. C. R.*, A, 12, June 25, 1861.

however, contain little but dry notations as to the condemnation and sale of the ship. The more exciting and piquant details are to be found in the piracy case against its officers and crew tried in the admiralty court in instance at New York.¹⁵

Not all of these 197 cases are reported in Blatchford's *Reports of Cases in Prize*.¹⁶ The eleven cases handled by the prize commissioners, for which no libels were filed, are naturally not included in Blatchford, who printed only the decisions of the judges.¹⁷ Equally understandable is it that the sixteen cases in the *Prize Commissioners' Register* which were held to be not prize cases do not appear in Blatchford.¹⁸ It is not so easy to account for eleven additional cases not having been reported by Blatchford, although they are among the 170 cases libelled and actually "decided as prize cases," except that they may fall into the category of the few cases mentioned in his preface as "cases in which decrees were entered without any opinion or memoranda of decision having been filed by the court."

15 Printed as *Trial of the Officers and Crew of the Privateer Savannah, on the Charge of Piracy, in the United States Circuit Court for the Southern District of New York, Hon. Judges Nelson and Shipman, Presiding*, Reported by A. F. Wharton, Stenographer and Corrected by the Counsel. (New York, Baker & Godwin, printers, 1862.)

16 Blatchford, Samuel—*Reports of Cases in Prize argued and determined in the Circuit and District Courts of the United States for the Southern District of New York, 1861-1865* (New York, 1866).

- 17 (1) Schooner *George W. Smith*, P. C. R., A, 1.
 (32) Brig *Mystery*, P. C. R., A, 32.
 (44) Cargo on Board *G. G. Baker*, P. C. R., A, 44.
 (45) Brig *William R. Kibby*, P. C. R., A, 45.
 (53) Barque *Jurgen Lorentzen*, P. C. R., A, 56.
 (74) Schooner *Charity*, P. C. R., A, 81.
 (76) Steamer *Calhoun*, P. C. R., A, 85.
 (101) Steamer *Constitution*, P. C. R., A, 138.
 (122) 19 barrels of molasses, P. C. R., A, 210.
 (128) 6 barrels of turpentine, P. C. R., A, 218.
 (178) 45 bales of cotton, P. C. R., B, 36.

18 Cf. p. 130, *supra*.

In two of these cases, those of the schooner *Haxall* (8)¹⁹ and the bark *Octavia* (7),²⁰ ships and cargo were, it is true, released without decree. But the remaining nine were disposed of by decree. In three of them the court ordered the vessels restored, and in six cases the prizes were condemned.

The three cases not cited in Blatchford in which the court issued a decree of restoration are those of the brigantine *Solferino* (17),²¹ the steamer *Nuestra Senora de Regla* (89)²² and the barque *Saxon* (177).²³ The brigantine *Solferino* (17), registered in Baltimore and returning from Rio with a cargo of coffee, was captured June 26, 1861, while steering toward, and about to enter the blockaded port of Charleston, but "without any actual knowledge of the existence of a lawful blockade of the port of her destination."²⁴ The court ordered vessel and cargo returned to the claimants on payment of costs. In the case of the steamer *Nuestra Senora de Regla* (89), which was ordered restored with damages to the claimants, the amount of damages awarded by the district court amounted to almost a quarter of a million dollars.²⁵ The district attorney appealed the question of the amount of damages to the Supreme Court, and in 1883, twenty years later, the Supreme Court ordered that the claimants be awarded \$65,000 plus 6 per cent interest, amounting to the total of \$144,822.50.²⁶ This

19 *P. C. R.*, A, 3, *Adm. Doc.*, vol. 16, p. 329, released by direction of State Department. Cf. Upton's *Prize Adjudications* sent to Secretary of Navy, p. 5, in U. S. Navy Department Archives.

20 *P. C. R.*, A, 6, *Adm. Doc.*, vol. 16, p. 328. Vessel released, by order of court under instructions from the Secretary of State. Cf. statement in *Prize Cases in New York*, Exec. Doc. 674, House of Representatives, 38th Cong., 1st Sess., p. 450.

21 *P. C. R.*, A, 17, *Adm. Doc.*, vol. 16, p. 357.

22 *P. C. R.*, A, 108, *Adm. Doc.*, vol. 17, p. 187, 203, 211, 254, 256.

23 *P. C. R.*, B, 34, *Adm. Doc.*, vol. 18, p. 174.

24 Decree filed August 24, 1861, in file of case (17).

25 \$220,970.54 including interest, awarded October 28, 1871.

26 December 10, 1883, *Adm. Doc.*, vol. 17, p. 256.

vessel was a ferry boat built in New York for a Spanish firm in Havana, to be used as a ferry in Havana Harbor, connecting the city with the railway to Matanzas at Regla. She was turned over to an agent of the company in New York, and the vessel began her voyage to Cuba. Stress of weather forced her to return to New York. On a second attempt she was again overtaken by bad weather, which drove her over the bar at Ocracoke Inlet; some of her machinery was damaged. The necessary repairs having been made, the vessel proceeded again on her way and appealed for permission to enter Port Royal to procure coal to replace the amount she had been forced to dump overboard. There she was seized when upon the captain's refusal to sell her to the government, it was discovered that letters from the Confederacy were concealed in the captain's cabin.²⁷ The barque *Saxon* (177), the third of these cases, was ordered restored with her cargo free of all costs.²⁸ A British vessel, owned in Cape Town, she had been seized in the harbor of Angra Pequena on the west coast of Africa, on October 30, 1863, while on a voyage from Table Bay, near Capetown, to Falmouth, England, via the Island of Ascension in the South Atlantic. The cargo aboard, however, had originally been shipped from Buenos Aires in the barque *Conrad*, an American vessel bound for New York. The barque *Conrad* had on her voyage northward been captured by the *Alabama*; converted into a privateer, she had been renamed *Tuscaloosa*, and her cargo had been put ashore at Angra Pequena. It was later put aboard the barque *Saxon* (177) to be shipped to Falmouth.²⁹

²⁷ Cf. depositions filed in case (89).

²⁸ March 17, 1864, *Adm. Doc.*, vol. 18, p. 174.

²⁹ Cf. Claim and Answer of Sun Mutual Insurance Company, filed February 13, 1864. The cargo had been insured by its New York consignee, and on its capture by the *Alabama* the insurance company had made good the loss, and therefore were the claimants for the cargo. Cf. Mr. Edward's brief, filed February 22, 1864, in case (177).

The six cases in which the prize was condemned include the cases of the steamer *Wilson* (132),³⁰ captured on July 9, 1862, at Hamilton, North Carolina, and after appraisal by a board of naval officers, transferred to the Army at the value thus determined, and the schooner *G. H. Smoot* (133),³¹ captured May 18, 1862, in Potecasy Creek, North Carolina, and taken by the Navy at its appraised value. Both were owned by citizens of North Carolina; both had been engaged in the transportation of troops and supplies for the Confederate forces, and both were condemned by default on December 30, 1863, a year and a day having elapsed after the return of the monition. A third case is that of part of the cargo of the schooner *Sophia* (179).³² Captured March 3, 1864, off the coast of Georgia, her cargo was libelled on May 25, 1864, in the New York prize court and condemned as lawful prize of war on June 25, 1864. The remaining three were steamers condemned with their cargoes for violation of the blockade in the closing days of the war. The steamer *Armstrong* (187), of 214 registered tons and owned in Glasgow, was captured December 4, 1864, off Wilmington on her second voyage from Bermuda laden with cotton. Both ship and cargo were condemned as prize of war, January 1, 1865.³³ Condemned on the same day was the steamer *Vixen* (188), of 305 registered tons and owned in London by the European Trade Company, a new company engaged in foreign trade. She had been captured on December 1, 1864, on her first voyage. Sailing from Falmouth, she had touched at Madeira, and taken on cargo at Bermuda, only to be captured en route to Charleston.³⁴ The third vessel, also condemned the same day, was the steamer *Emma Henry* (189), on her second voyage through the blockade. Of 242 registered tons, and owned by Henry

30 (132) *P. C. R.*, A, 226, *Adm. Doc.*, vol. 17, p. 368.

31 (133) *P. C. R.*, A, 226, *Adm. Doc.*, vol. 17, p. 369.

32 (179) *P. C. R.*, B, 38, 39, *Adm. Doc.*, vol. 18, p. 287.

33 (187) *P. C. R.*, B, 56, 51, 52, *Adm. Doc.*, vol. 18, p. 512, 524.

34 (188) *P. C. R.*, B, 54, *Adm. Doc.*, vol. 18, p. 519.

Lafone of Liverpool, she was captured December 1, 1864, while trying to run the blockade at Wilmington with a cargo of cotton and turpentine. She was a valuable prize and was taken by the government at her appraised value of \$85,000.³⁵

It should be noted that whereas these eleven cases do not appear in Blatchford, he included three cases which do not appear in the *Prize Commissioners' Register*. These are the cases of the schooner *D. F. Keeling*,³⁶ the brig *Mary McRae*,³⁷ and the schooner *Ned*.³⁸ The admiralty docket indicates that these were not prize cases but cases of enemy property tried under the Confiscation Acts of July 13, 1861, and August 6, 1861.

As has been indicated, of the 196 cases recorded in the *Prize Commissioners' Register*, only 181 proved to be genuinely prize cases.³⁹ In eleven of these, after preliminary handling by the prize commissioners, no libel was filed, and the case was never placed on the admiralty docket. Five were cases of ships that were released,⁴⁰ and one was that of a vessel wrecked;⁴¹ two,

35 (189) *P. C. R.*, B, 55, *Am. Doc.*, vol. 18, p. 518.

36 Blatchford, *Prize Cases*, p. 92; *Adm. Doc.*, vol. 17, p. 4. Condemned under act of July 13, 1861.

37 Blatchford, *Prize Cases*, p. 91; *Adm. Doc.*, vol. 16, p. 468. Condemned under act of Aug. 6, 1861.

38 Blatchford, *Prize Cases*, p. 119; *Adm. Doc.*, vol. 16, p. 466. Condemned under act of Aug. 6, 1861.

39 Cf. pp. 129-134, *supra*, also note 10, *supra*.

40 (1) Schooner *George W. Smith*, captured at Hampton Roads, April 24, 1861, on a voyage from New York to Wilmington, N. C., carrying a cargo of gun carriages. *Annual Report* of Secretary of Navy, 1861, p. 146. She was released May 25, 1861, under instructions from the Secretary and Solicitor of the Treasury dated May 23, 1861. *MSS. Reports of Prize Cases at New York*, vol. I, p. 6, U. S. Navy Department Archives.

(32) Brig *Mystery*, no record, *P. C. R.*, A, 32.

(45) Brig *Wm. R. Kibby*, seized in port of New York by police, afterward released by captors, *P. C. R.*, A, 46.

(53) Barque *Jurgen Lorentzen*, Danish vessel of over 300 tons, on voyage from Lisbon to New York or New Orleans on orders at Havana. Captured December 8, 1861, 1000 miles from port,

the case of the steamer *Calhoun* (76) and the case of the cargo on board the *G. G. Baker* (44), were ultimately tried in Philadelphia, not in New York.⁴² Two were cargo items that were never libeled because the amounts involved were too small to cover the expenses.⁴³ One other (178), also a cargo case, re-

bound for Havana. *P. C. R.*, A, 56. Released on order of district attorney for Southern District of New York. Cf. letter of E. D. Smith to Secretary Welles, June 30, 1862, filed in *MSS Letters from Various Sources*, 1862, Supplemental volume in U. S. Navy Dept. Archives.

- (101) Steamer *Constitution*, no information, *P. C. R.*, A, 138. In *MSS. Reports of Prize Cases at New York*, I, 6, E. Delafield Smith reports that vessel was captured June 1, 1862, case was reported on June 3, 1862, to Secretary of Navy, and on June 6 he received instructions from him to release vessel and cargo which was done. U. S. Navy Department Archives.

41 (74) Schooner *Charity*, captured off Hatteras Inlet, December 15, 1861, and wrecked off south shore of Long Island. *P. C. R.*, A, 81. "Vessel was chartered and cargo owned by Senator Simmins of Rhode Island. A part of the cargo was saved by wreckers and by them sold. Their charges covered the proceeds. I reported the case in full to Solicitor of Treasury on April 8, 1862. On April 26, he instructed me to take no proceedings." Report of E. Delafield Smith, district attorney, in *MSS Reports of Prize Cases at New York*, I, 6, U. S. Navy Dept. Archives.

42 (44) Cargo on Board *G. G. Baker*, no further information in *P. C. R.*, A, 44. Reported in *Official Records*, I, 1, p. 61. In *Prize Cases in New York*, p. 466, as tried and condemned in Philadelphia prize court.

(76) Steamer *Calhoun*, *P. C. R.*, A, 85, captured January 23, 1862, while returning to New Orleans from Havana with cargo of 50,000 pounds of powder, according to Robinson, *Confederate Privateers*, p. 253. Condemned in Philadelphia prize court, April 22, 1862. *Prize Cases in New York*, p. 478.

43 (122) 19 barrels of molasses captured by United States steamer *Hatteras* and brought to this port, Sept. 27, 1862. *P. C. R.*, A, 210. Note in *Cargo Book*, folio 144, under date of October 7, 1863. "The above were sold by Ward and Gore for the purpose of paying storage expenses and to stop further expenses. The district attorney having declined to file a libel as the amount was too small to cover expenses..."

(128) 6 barrels of turpentine captured with sloop *John Thompson*, October 9, 1862, "sold after gauging—captain of freighter who brought it wanted to be paid—notified District Attorney and

mains a complete mystery, for there are no papers or further references beyond the initial entry in the register.⁴⁴

Analysis of the 170 cases that reached the admiralty docket reveals that there were 14 restorations, 147 condemnations, and 9 cases in which part of the prize was restored and part condemned.

The several types of decree of restoration and their theoretical basis have been described in an earlier chapter.⁴⁵ Of the fourteen cases in which restoration was ordered by the New York prize court, only one, the case of the brig *Solferino* (17), involved payment by the claimants of all the costs and disbursements incident to the proceedings. It was found that although the brig was owned by loyal citizens of the United States and although "the vessel was pursuing a lawful voyage at the time of her capture, without any actual knowledge of the existence of a lawful blockade of the port of her destination," yet in view of the fact that she "was steering towards and about to enter a port which was in condition of effective blockade" the capture was not without probable cause.⁴⁶ In four cases restoration was accompanied by award of damages to the claimants;⁴⁷

Upton in advance of necessity of doing something. The amount received being small, the District Attorney refused to libel turpentine October 16, 1862—deposited net proceeds of \$413 in City Bank to the credit of the Prize Court". *P. C. R.*, A, 218.

44 (178) 45 bales of cotton picked up by *G. Vanderbilt*, Feb. 13, 1864—"Received letter from T. M. Wheeler & Co. stating that receipt had been given for above property." *P. C. R.*, B, 36.

45 Cf. Chapter III, p. 72, *supra*.

46 Cf. court papers filed August 24, 1861, in folder of brig *Solferino* (17), *Adm. Doc.*, vol. 16, p. 357. This is one of the cases not reported in Blatchford's *Prize Cases*.

47 Steamer *Labuan* (71), *P. C. R.*, A, 75; *Adm. Doc.*, vol. 17, p. 126; damages awarded \$189,390.63, cf. court papers filed May 21, 1862, and March 25, 1868;

Steamer *Nuestra Senora de Regla* (89), *P. C. R.*, A, 108; *Adm. Doc.*, vol. 17, p. 187; damages awarded by New York prize court amounted to \$214,884.00 plus interest, cf. order filed May 10, 1871;

in the other nine cases the prize was restored without award of damages or payment of costs.⁴⁸

With only one exception, the nine cases of partial restoration occurred in the first three months of the blockade. In the early days of the blockade the question of knowledge of the blockade was an important one in the adjudication of prizes captured trying to enter a blockaded port. Before the radio and the telephone, when even the telegraph had not outgrown its infancy and submarine cables were rare, news travelled slowly, or at least uncertainly. Owners of ships and cargoes found it difficult to communicate with their vessels and agents; one device successfully employed was to send a letter to be delivered to the ship's captain by the blockading fleet, warning him of the blockade and directing him to a Union port.⁴⁹ When no notation had been made on the ship's register that the ship had been officially warned of the blockade by a member of the blockading fleet, and the depositions *in preparatorio* furnished no proof of knowledge of the blockade on the part of the ship's officers and crew, or owners and agents for the cargo, the court decided the case on the ground of ownership. Property, whether vessel or cargo, owned by loyal citizens of the United States, by foreigners, or by neutrals residing in the North, was released;

Schooner *Glen* (169), *P. C. R.*, B, 15; *Adm. Doc.*, vol. 18, p. 22; damages awarded \$17,150.55, July, 1863;

Schooner *Sybil* (186), *P. C. R.*, B, 49; *Adm. Doc.*, vol. 18, p. 506; damages awarded for \$53,630.09, *cf.* court papers under date of March 2, 1868.

- 48 Schooner *Haxall* (4), *P. C. R.*, A, 3; *Adm. Doc.*, vol. 16, p. 329;
 Barque *Octavia* (7), *P. C. R.*, A, 6; *Adm. Doc.*, vol. 16, p. 328;
 Schooner *Tropic Wind* (19), *P. C. R.*, A, 19; *Adm. Doc.*, vol. 16, p. 384;
 Schooner *Argonaut* (36), *P. C. R.*, A, 36; *Adm. Doc.*, vol. 16, p. 548;
 Schooner *Jane Campbell* (49), *P. C. R.*, A, 51; *Adm. Doc.*, vol. 17, p. 59;
 Brig *Isabella Thompson* (167), *P. C. R.*, B, 13; *Adm. Doc.*, vol. 18, p. 17;
 Sloop *Evening Star* (168), *P. C. R.*, B, 14; *Adm. Doc.*, vol. 18, p. 63;
 Barque *Saxon* (177), *P. C. R.*, B, 34; *Adm. Doc.*, vol. 18, p. 174;
 Brig *Sarah M. Newhall* (196), *P. C. R.*, B, 63; *Adm. Doc.*, vol. 19, p. 99.

49 Letter of E. W. Voss & Co. to the captain of the barque *Pioneer* (5), marked *F* in ship's papers. In this particular case, however, the technique saved only the cargo, for the ship was condemned as enemy property.

property owned by persons residing in the Confederate States, whether citizens or aliens, was condemned as enemy property.⁵⁰ When property was held jointly by Confederate citizens and neutrals or Northerners, the portion held by persons residing in the Confederacy was condemned; thus in the case of the schooner *Forest King* (14), $\frac{7}{8}$ was owned in Fairhaven, Massachusetts, and $\frac{1}{8}$ in Darien, Georgia; the court condemned $\frac{1}{8}$ of the vessel as enemy property and restored the cargo and $\frac{7}{8}$ of the vessel. This decision was affirmed by the circuit court on appeal by the Georgia owner of $\frac{1}{8}$ of the vessel.

Nor is the ninth case wholly an exception to the rule. This vessel, the *John Gilpin* (120), had been left in New Orleans by her captain at the outbreak of hostilities and was seized at her wharf in Algiers, Louisiana, when New Orleans was captured by the Union forces. Since she had not tried to run the blockade, the case was decided on the basis of ownership, and the decree released the $\frac{3}{4}$ interest in the vessel owned in Massachusetts, and condemned the cargo.⁵¹

50 Schooner *Crenshaw* (6), *P. C. R.*, A, 5; *Adm. Doc.*, vol. 16, p. 331.

Captured May 17, 1861. Vessel condemned, part of cargo released.

Barque *Winifred* (8), *P. C. R.*, A, 7; *Adm. Doc.*, vol. 16, p. 333.

Captured May 25, 1861, vessel condemned, $\frac{3}{8}$ of cargo released.

Schooner *Lynchburg* (9), *P. C. R.*, A, 9; *Adm. Doc.*, vol. 16, p. 334.

Captured May 30, 1861, vessel condemned, part of cargo released.

Schooner *Hannah M. Johnson* (10), *P. C. R.*, A, 10; *Adm. Doc.*, vol. 16, p. 338. Captured May 31, 1861, vessel released, part of cargo released, part condemned.

Barque *General Green* (11), *P. C. R.*, A, 11; *Adm. Doc.*, vol. 16, p. 344.

Captured June 4, 1861, vessel condemned, cargo restored.

Schooner *Forest King* (14), *P. C. R.*, A, 14; *Adm. Doc.*, vol. 16, p. 352.

Captured May 29, 1861, cargo and $\frac{7}{8}$ of vessel restored, $\frac{1}{8}$ of vessel condemned.

Schooner *Velasco* (18), *P. C. R.*, A, 18; *Adm. Doc.*, vol. 16, p. 367.

Captured July 13, 1861. $\frac{3}{4}$ vessel condemned and cargo condemned, $\frac{1}{4}$ vessel released.

51 Schooner *John Gilpin* (120), *P. C. R.*, A, 204; *Adm. Doc.*, vol. 17, p. 310. Cargo and $\frac{1}{4}$ vessel condemned, $\frac{3}{4}$ of vessel released. On appeal to the circuit court, however, both vessel and cargo were released on ground that vessel and cargo should not be regarded as enemy property.

Of the 170 prize cases decided in the New York district court, 48 were appealed either to the circuit court or to the Supreme Court. The Act of March 3, 1863, provided that appeals should be made directly to the Supreme Court in prize cases where the amount exceeded \$2,000 or for lesser amounts on certificate of the district judge of the difficulty of the question.⁵² Subsequent to this act eight appeals were accordingly taken from the district court direct to the Supreme Court,⁵³ and only four of the twelve New York prize cases that reached the highest bench went through the medium of the circuit court.⁵⁴ The circuit court affirmed twenty-three of the forty decisions appealed to it, reversed sixteen, and slightly modified one,⁵⁵ the four that were

52 12 Stat. 759, sect. 7.

53 (15) Schooner *Mary Clinton*, P. C. R., A, 15; *Adm. Doc.*, vol. 16, p. 354.

(16) Barque *Sally Magee*, P. C. R., A, 16; *Adm. Doc.*, vol. 16, p. 356.

(54) Schooner *Stephen Hart*, P. C. R., A, 57; *Adm. Doc.*, vol. 17, p. 81.

(82) Schooner *Napoleon*, P. C. R., A, 93; *Adm. Doc.*, vol. 17, p. 166.

(89) Steamer *Nuestra Senora de Regla*, P. C. R., A, 108; *Adm. Doc.*, vol. 17, p. 187.

(143) Barque *Springbok*, P. C. R., A, 244; *Adm. Doc.*, vol. 17, p. 450.

(151) Steamer *Peterhoff*, P. C. R., A, 253; *Adm. Doc.*, vol. 17, p. 494.

(167) Brig *Isabella Thompson*, P. C. R., B, 13; *Adm. Doc.*, vol. 18, p. 17.

54 (2) Barque *Hiawatha*, P. C. R., A, 1; *Adm. Doc.*, vol. 16, p. 327.

(6) Schooner *Crenshaw*, P. C. R., A, 5; *Adm. Doc.*, vol. 16, p. 331.

(48) Ship *Cheshire*, P. C. R., A, 50; *Adm. Doc.*, vol. 17, p. 51.

(109) Steamer *Nassau*, P. C. R., A, 152; *Adm. Doc.*, vol. 17, p. 185.

55 Cases affirmed by Circuit Court: barque *Hiawatha* (2); ship *North Carolina* (3); barque *Pioneer* (5); schooner *Crenshaw* (6); barque *Winfred* (8); schooner *Lynchburg* (9); barque *General Green* (11); schooner *Forest King* (14); schooner *Prince Leopold* (23); schooner *Aigburth* (26); schooner *Joseph H. Toone* (42); schooner *Ezilda* (43); brig *Delta* (46); ship *Cheshire* (48); steamer *Ella Warley* (88); schooner *Albert* (92); steamer *Stettin* (102); steamer *Elizabeth* (104); steamer *Patras* (105); steamer *Nassau* (109); steamer *Memphis* (116); steamer *Sunbeam* (127); steamer *Ouachita* (137).

16 cases in which decrees were reversed by circuit court: barque *Empress* (50); schooner *Mersey* (91); ship *Alliance* (96); ship *Gondar* (98); schooner *General C. Pinckney* (99); schooner *John Gilpin* (120); 52 bales of cotton on *Monte Christo* (125); cargo of cotton and rosin captured in

further appealed to the Supreme Court were affirmed.⁵⁶ Appeals to the Supreme Court were no more successful; of the cases directly appealed to that body, four were sustained;⁵⁷ one, the *Springbok* (143), was sustained as to the cargo, but reversed as to the vessel;⁵⁸ and one, the *Peterhoff* (151), was reversed.⁵⁹ In the case of the *Nuestra Senora de Regla* (89), damages awarded in the lowest court were reduced on appeal of the district attorney on behalf of the government;⁶⁰ the eighth case, that of the *Napoleon* (82), was never passed on by the Supreme Court, being disposed of by executive intervention.⁶¹ Only in

New Bern, in March of 1862, brought into New York on nine ships. Cargo on each was libelled separately, and the cases were treated separately and filed as such as cases (79-87). Blatchford, however, reports it as one case under heading of *282 Bales of Cotton and other Property*. Following the order of the court papers and docket books I have treated them as 9 cargo cases.

In the case of the brig *Sarah Starr* (20) part of the cargo was released on appeal to the circuit court.

⁵⁶ Note 54 *supra*. In the case of the schooner *Crenshaw* (6) the decision was affirmed except for a small part of the cargo which was restored.

⁵⁷ Schooner *Mary Clinton* (15), the mandate of Supreme Court affirming decision in file of case under date of May 15, 1866. This case is not included in *Prize Cases Decided in the Supreme Court, 1789-1918*, prepared by the Carnegie Endowment for International Peace and under the supervision of James Brown Scott, 3 vols. (Oxford, 1923). Blatchford reports the case as affirmed by default, February 27, 1866, p. 561. Barque *Sally Magee* (16); schooner *Stephen Hart* (54) reported in Scott, *op. cit.*, III, 1588 as "The Hart"; brig *Isabella Thompson* (167) reported in Scott, *op. cit.*, III, as "The Thompson", similarly called in Supreme Court Reports, 3 Wall, 155.

⁵⁸ Barque *Springbok* (143), *P. C. R.*, A, 244; *Adm. Doc.*, vol. 17, p. 467; Scott, *op. cit.*, III, 1609.

⁵⁹ Steamer *Peterhoff* (151), *P. C. R.*, A, 253; *Adm. Doc.*, vol. 17, p. 557; Scott, *op. cit.*, III, 1629.

⁶⁰ Steamer *Nuestra Senora de Regla* (89), printed decision filed in folder of case under date of December 7, 1883.

⁶¹ The schooner *Napoleon* (82); this case is dealt with in the admiralty docket along with the two hundred eighty-two bales of cotton captured at New Bern mentioned above in note 54, but it was separately libelled. The cargo case was reversed in the circuit court; the case of the vessel was appealed to the Supreme Court, *cf.* letter of clerk of Supreme Court

two cases, the *Napoleon* (82) and the *Troy* (124), did the executive department intervene to achieve an outcome contrary to the decision of the district court.⁶² In both these cases the ships had been condemned as prize. The *Napoleon* (82) was claimed by a New York merchant, D. Colden Murray, who held a mortgage on $\frac{7}{8}$ of the vessel, but she was condemned because she had been used as a blockade runner by his Southern agent. Judge Betts ruled:

Although all these acts were without the sanction of and violently in opposition to the wishes of the claimant, who is personally a loyal citizen, of high character and integrity, and a resident merchant of this city, opposed strenuously to the rebellion, and has been deeply injured pecuniarily by the misuse of his property on this occasion and otherwise, yet the acts of his agent, with whom the vessel was left by him, determine the character of the vessel; and the integrity of her real owner cannot secure her from the consequences of her illicit employment. The claimant must appeal to his government for relief from the forfeiture. The court is not empowered by the existing laws to adjudge the case upon principles of fair and reasonable equity, but must adhere to and apply the severe edicts of prize law. . . . The courts cannot, in time of war, depart from the strict behests of the law, by shielding property from the effects of a hostile character impressed upon it by the culpable conduct of those who are intrusted with it, or who so hold it that it can be turned to the aid of the enemy, or to hostile use against our own government. No equity of lien or claim, however urgent, held by innocent third parties, is allowed to prevail in a prize court

filed in folder of case under date of November 23, 1863. Order with consent of district attorney in accordance with direction of Secretary of Treasury in letter dated January 7, 1864, $\frac{7}{8}$ of vessel released to claimants on payment of one half the costs and compensation of district attorney. Filed under date of January 19, 1864.

⁶² Schooner *Troy* (124), Blatchford, *Prize Cases*, p. 246, reports decree of condemnation October, 1862. Does not report subsequent action. Order of December 10, 1862, vacating decree of condemnation and restoring property to claimant on payment of costs is filed in case folder. Cf. also, *Prize Cases in New York*, pp. 210-211, 524-533.

against property seized while in use by a belligerent. (1 Kent's Comm., 87).⁶³

The case of the *Napoleon* (82) was appealed to the Supreme Court, but the claimant acted also on Judge Betts' suggestion and applied to the government for relief. As a result, before the Supreme Court had acted on the appeal, the United States district attorney at New York, acting under the direction of the Secretary of the Treasury, moved for the vacating and rescinding of the original decree in the New York prize court, and $\frac{7}{8}$ of the vessel was released to the claimant on payment of one-half of the costs and the compensation of the district attorney. In the case of the *Troy* (124) a similar result was achieved by the intervention of the Secretary of State. But in the latter case costs and fees ate up the proceeds of the cargo, leaving a bare \$200 for the claimant from the \$1300 raised at the sale; the vessel had been abandoned in the South as not sufficiently seaworthy to make the trip to New York.⁶⁴

Of the 181 prize cases nearly all, or 165, involved ships with or without cargo; seventeen involved cargoes only.⁶⁵

⁶³ Blatchford, *Prize Cases*, p. 298-9.

⁶⁴ In four cases ships were released by executive order before the case was determined. The schooner *George W. Smith* (1) was never libeled and was released by order of the Secretary of the Treasury, May 25, 1861, MSS *Report of Prize Cases at New York* — U. S. Navy Department Archives; schooner *Haxall* (4) libelled but released by direction of State Department; barque *Octavia* (7) libelled but released by order of Secretary of State, Upton, *Prize Adjudications in the District of New York*, pp. 3, 5 MSS vol. U. S. Navy Department Archives; steamer *Constitution* (101), captured June 1, 1862, and released June 6, on instruction from Secretary of Navy, "As it appears from your statement, vessel was laden with government stores and shows good intention . . . position due to ignorance of coast on part of captain." Letter of Gideon Welles to E. Delafield Smith, June 4, 1862. MSS *General Letter Book*, vol. 68, p. 338. United States Navy Department Archives.

⁶⁵ This is not an error in addition; case (82) which combines two separate cases, the *Napoleon* and 282 *Bales of Cotton*, not its original cargo, is the villain responsible. Cf. notes 55 and 61 *supra*.

These cargo cases are a miscellaneous lot. Eight of them dealt with naval stores, principally rosin, seized by the United States naval forces when they captured New Bern on March 14, 1862. The rosin was shipped north to the New York prize court by Commodore Rowan on eight different vessels, and each lot was libelled separately when it arrived.⁶⁶ The ninth case was that of 282 bales of cotton, together with oak staves captured at the same time and under the same circumstances, and sent north on the *Napoleon* (82), a schooner also seized at New Bern at the same time. The ship and cargo were libelled separately but are filed as one case in the files of the New York court. Part of this cargo brought in by the *Napoleon* (82) was claimed by a Brooklynite, Calvin B. Dibble, who stated that he and his brothers, organized as Dibble and Brothers in New Bern and as C. B. Dibble and Company in New York, were loyal to the Union. As proof he offered the statement that two of his brothers were in Confederate prisons, and that another brother had been appointed port master of New Bern after its capture by Union forces.⁶⁷ Nevertheless, in all these cases the cargoes were condemned as prize in the district court on December 30, 1862. On appeal to the circuit court, however, these condemnations were reversed on the ground that the district court lacked jurisdiction.⁶⁸

Two other cargo cases also involved goods seized when not on shipboard. In one case, fifty-two bales of cotton intended to be shipped to New York on the *Monte Christo* (125) were captured on a lighter when that vessel was burned in Aransas Bay. The cotton was claimed by a New York merchant who had gone south in January, 1861, to realize outstanding debts; he had been paid in Confederate notes, which he had converted into cotton. The district court condemned the cotton as lawful prize.

⁶⁶ Cases (79-87).

⁶⁷ Claims and Answer of C. B. Dibble, filed July 22, 1862, in folder of case (82).

⁶⁸ Blatchford, *Prize Cases*, p. 305, note.

On appeal to the circuit court the decision was reversed, Judge Nelson ruling that the goods were not enemy property and that no proof of intent to run the blockade had been furnished.⁶⁹ The other case, involving 1253 bags of rice captured on lighters afloat in the North Santee River, South Carolina, and 103 casks of rice seized in a warehouse in the Wacaman River, ended in condemnation as lawful prize. No appeal was taken.⁷⁰

Of the six remaining cargo cases, two originated in seizure of ships which were subsequently wrecked and abandoned; part of the cargo was salvaged and brought into the port of New York on other vessels; and in both cases condemnation resulted.⁷¹ No libels were issued in the other four cases. In two of them the district attorney "declined to file a libel as the amount was too small to cover expenses."⁷² In the other two, neither the *Prize Commissioners' Register* nor the cargo book of the prize commissioners furnished information as to their disposition.⁷³

By far the most important cases brought into the New York prize court dealt with ships suspected of violation of the blockade of the Southern ports. The 165 cases actually involved 181 ships, exclusive of vessels wrecked; seventeen ships captured for the most part at New Bern or in nearby creeks at the time of

⁶⁹ Case (125), *P. C. R.*, A, 214; *Adm. Doc.*, vol. 17, p. 333; Blatchford, *Prize Cases*, pp. 310, 645.

⁷⁰ Case (113), *P. C. R.*, A, 176; *Adm. Doc.*, vol. 17, pp. 236, 237; Blatchford *Prize Cases*, p. 211.

⁷¹ Case (179), Schooner *Sophie*, *P. C. R.*, B, 38; *Adm. Doc.*, vol. 18, p. 287. Decree of June 25, 1862 not in Blatchford. Case (197), A part of the Cargo of Steamer *Pevensey*, not in *P. C. R.*; *Adm. Doc.*, vol. 18, p. 376; Blatchford, *Prize Cases*, p. 628; *MSS Cargo Book*, Folio 144, Oct. 7, 1863.

⁷² Case (122) 19 barrels molasses *P. C. R.*, A, 210. Case (128) 6 barrels of Turpentine captured with sloop *John Thompson*. *P. C. R.*, A, 218, see note 43 *supra*.

⁷³ Case (44) Cargo on Board *G. G. Baker*, *P. C. R.*, A, 44. Probably case tried in Philadelphia. Cf. note 42 *supra*. Case (178) 45 Bales of Cotton picked up by *Vanderbilt*, *P. C. R.*, B, 36.

the Federal occupation of that Carolina port (March 14, 1862), were lumped together to constitute one case. Taken over by the army or navy on appraisal, they were libelled and condemned in the New York court.⁷⁴ It will be remembered that in seven of these cases no libel was filed. In addition fourteen vessels were restored by the district court, and two were partially restored. One hundred fifty-eight vessels in all were condemned as prize, but three of these were treated subsequently as recaptures and were released to their original owners on payment of military salvage.

In recapitulation, only 181 of the 196 cases in the *Prize Commissioners' Register* were prize cases. Of these, 17 dealt exclusively with cargo (one combined cargo and ship), and 165 cases dealt with 181 ships, most of which had cargo aboard. Eleven cases were never brought to trial; of the 170 that were, 14 were restored (all ships), 147 were condemned (including 17 cargo cases), and 9 cases resulted in the partial restoration of vessel or cargo on board. On appeal in 40 cases the circuit court affirmed 23 decisions, reversed 16, and modified one. The Supreme Court affirmed 4 of the 8 cases appealed directly from the district court, and the decisions of the 4 cases appealed from the circuit court.

⁷⁴ Case (126) *P. C. R.*, A, 215; *Adm. Doc.*, vol. 17, pp. 322, 323.

CHAPTER VI

THE CONTENTS OF THE PAPERS

TURNING from the legal disposition of these cases, attention may be directed to other salient points arising from the contents of these papers. Though lacunae and contradictions in the records make absolute statistical accuracy impossible, analysis may supply a considerable body of factual data with respect to many problems, some of them controversial, and in some cases not corroborative of accepted opinions.

Fairly readily determinable is the nationality of the prize vessels brought into the New York prize court. They were almost evenly divided between the Confederacy and Great Britain. The British had, indeed, a slight edge in the number of ships involved, claiming 86 of them. Thirteen of these, however, were declared by the court to be enemy property. Judge Betts refused to recognize the legality of the transferal or sale by Confederate to British owners of twelve of them¹ and the thirteenth had false registration;² six more were treated as suspect. Registration of these eighty-six British ships was almost equally divided between the ports of the United Kingdom and of her American possessions. Of the thirty-eight registered in the United Kingdom, London claimed fourteen,³ Liverpool thirteen;⁴ the rest

1 *Sarah Starr* (20); *Prince Leopold* (23); *Aigburth* (26); *Edward Barnard* (41); *Joseph H. Toone* (42); *Ezilda* (43); *Delta* (46); *Albion* (47); *Major Barbour* (68); *Mersey* (91); *Sarah* (106); *Water Witch* (135).

2 The *A. D. Vance* (181) carried her original British register although she was then owned in North Carolina. Blatchford, *Prize Cases*, p. 608.

3 *Stettin* (102); *Patras* (105); *Memphis* (116); *Sunbeam* (127); *Ouachita* (137); *Granite City* (150); *Peterhoff* (151); *Antelope* (156); *Gertrude* (157); *Emma* (172); *Annie* (184); *Lady Stirling* (185); *Vixen* (188); *Charlotte* (193).

4 *Hiawatha* (2); *Delta* (46); *Cheshire* (48); *Jane Campbell* (49); *Stephen Hart* (54); *Gondar* (98); *Tubal Cain* (115); *Anglia* (131); *Scotia* (134); *Douro* (147); *Nicolai I* (149); *Banshee* (176); *Alliance* (96).

were scattered among other British ports.⁵ Most numerous were those registered in the Bahamas, twenty-three in all.⁶ Eight hailed from Nova Scotia,⁷ two from Bermuda,⁸ one each from Quebec,⁹ Prince Edward Island,¹⁰ Honduras,¹¹ and Kingston, Jamaica.¹² Five ships were provisionally registered under the British flag at Havana,¹³ one at Tampico;¹⁴ one came from remote Cape Town.¹⁵ Four ships carried provisional British registration, which had been issued by British consuls in the Confederate ports of Charleston, Mobile, and New Orleans.¹⁶

As was to be suspected, the thirteen British ships that were condemned as enemy property were mostly registered in ports

⁵ From Glasgow, the *Antona* (155), *Armstrong* (187), *Emma Henry* (189), *Blenheim* (195); Hull, the *Empress* (50), *Labuan* (71); Bristol, the *Robert Bruce* (130); *Dublin*, the *A. D. Vance* (181); Falmouth, *Springbok* (143); two uncertain, papers destroyed, the *Ann* (114), *Kate* (174).

⁶ *Tropic Wind* (19); *Albion* (47); *Wm. H. Northrup* (51); *Ella Warley* (88); *Belle # 1* (90); *Mersey* (91); *Albert* (92); *Maria* (93); *Flash* (94); *Mary Teresa* (100); *Elizabeth* (104); *Nassau* (109); *British Empire* (117); *Annie Sophia* (118); *Lizzie* (121); *Annie Dees* (138); *Levi Rowe* (139); *Florida* (142); *Annie* (146); *Belle # 2* (148); *Sue* (153); *Sybil* (186); *Mary* (191).

⁷ *Louisa Agnes* (27); *Argonaut* (36); *Mars* (69); *Revere* (129); *Mary Jane* (152); *Isabelle Thompson* (167); *Glen* (169); *Sarah M. Newhall* (196).

⁸ *Prince Leopold* (23); *St. George* (158).

⁹ *Minna* (145).

¹⁰ *Rising Dawn* (154).

¹¹ *Nymph* (17).

¹² *Water Witch* (135).

¹³ *Joseph H. Toone* (42); *Ezilda* (43); *Sarah* (106); *Annie* (108); *Rambler* (136).

¹⁴ *Tampico* (162).

¹⁵ *Saxon* (177).

¹⁶ *Sarah Starr* (20) in Charleston; *Aigburth* (26) in Charleston; *Edward Barnard* (41) in Mobile; *Major Barbour* (68) in New Orleans.

in the Western Hemisphere. Besides the four vessels provisionally registered in Confederate ports, they included three of the vessels registered at Havana and four from British West Indian ports—one from Bermuda, two from Nassau, and one from Kingston.¹⁷ Two, however, came from the British Isles. The brig *Delta* (46), owned by Charles Adams, residing in Galveston, had been sold to John A. Marsh of Liverpool in August, 1861. Adams took back a mortgage of £11,900, which he assigned to Isaac and Seth Adams, citizens of Massachusetts. The court felt that the "transfer of the vessel by Adams to Marsh, a British subject, is open to grave suspicion, as colorable and false," and "it was to give the vessel the semblance of a neutral bottom, while she was actually navigated in the interest of a belligerent party for the purposes of trade with, and aid and benefit to, the enemy of the captors."¹⁸ Dublin was the port of registration for the second, the steamer *A. D. Vance* (181). However, the master, an Englishman, testified that the vessel was owned by Power, Low and Company of Wilmington, North Carolina, and that they had appointed him to her command. She had run the blockade at Wilmington successfully for at least twelve months prior to her capture in September of 1864.¹⁹

The six vessels suspected of being, but not condemned as, enemy property had all been registered in Nassau; they were condemned for running the blockade, thus evading the issue.²⁰

Apart from the British vessels, only three ships bore foreign registry. One, the schooner *Soledad Cos* (37), was registered as

¹⁷ *Joseph H. Toone* (42), *Ezilda* (43), *Sarah* (106), at Havana; *Prince Leopold* (23) at Bermuda; *Albion* (47), *Mersey* (91) at Nassau; *Water Witch* (135) at Kingston.

¹⁸ Blatchford, *Prize Cases*, pp. 136-7.

¹⁹ Deposition I, answer to question 6, filed with papers of *A. D. Vance* (181), cf. note 101 *infra*.

²⁰ *William H. Northrup* (51); *Ella Warley* (88); *Belle* # 1 (90); *Albert* (92); *Maria* (93); *Elizabeth* (104).

Mexican, owned at Vera Cruz; she was nevertheless condemned as enemy property, for she had been the *Ann Taylor*, of Galveston, and her sale in September, 1861, was not deemed bona fide. Another, the steamer *Nuestra Senora de Regla* (89), already mentioned, was Spanish; an American built ferry-boat, intended for service in Havana harbor, she was picked up on the way to Cuba; ordered restored in the district court, with costs and damages, the amount of the damages remained unsettled until decided by the Supreme Court in 1883. Only one vessel claimed registration on the European mainland; this was a Danish barque, the *Jurgen Lorentzen* (53). Bound from Rio with a cargo of coffee, her destination as between New York and New Orleans was to be determined by orders to be picked up at Havana; on the way there she was picked up in mid-ocean, a thousand miles from Rio, on December 28, 1861. She was released on January 30, 1862.

Seven ships bore registration in Northern ports. Two—the ship *North Carolina* (3), registered in Baltimore but owned by residents of Virginia, and the barque *General Green* (11), registered in New York but owned by a resident of Charleston—were condemned as enemy property. In one case, the very first in the *Prize Commissioners' Register*, the ownership is not ascertainable, because the ship's papers were returned to her owner on her release.²¹ The four others were owned by citizens of the Northern states. The schooner *Forest King* (14), registered in New Bedford, was seven-eighths owned in Massachusetts; on a voyage from New York to Rio and thence to New Orleans she was picked up at Key West, where she had put in for supplies; she was released except for the one-eighth owned in Georgia. Likewise, the brig *Solferino* (17), owned as well as registered in Baltimore, was released after having been seized en route to Charleston from Rio with a cargo of coffee; the

²¹ *George W. Smith* (1), *Annual Report of the Secretary of the Navy* (1861), p. 146.

libelants were unable to prove knowledge of the blockade on the part of captain or crew. The schooner *Hannah M. Johnson* (10), owned and registered in Greenport, L. I., left New Orleans for New York after the blockade had been proclaimed, but before it had become effective at New Orleans; she was released on payment of costs. On the capture of New Orleans by the Union naval forces, the schooner *John Gilpin* (120), from Gloucester, was captured at her dock in Algiers. As already noted, she had been unable to clear from the port at the outbreak of hostilities; the court ordered her restored to her owners.²²

Seventy-eight of the ships had been registered in ports of the Confederate states, though in thirty cases the particular port is not specified.²³ The rest were fairly widely distributed; 6 from Richmond,²⁴ 4 from Wilmington,²⁵ and one from Edenton (North Carolina),²⁶ 12 from Charleston,²⁷ 2 from Savannah,²⁸ 3 from Florida, one each from Jacksonville, Apalachicola, and

²² Decision in the circuit court, November 7, 1863. Blatchford, *Prize Cases*, 661. The ships that had been recaptured from the hands of the Confederates had, of course, been originally owned in the North: *Mary Alice* (21), *Hency C. Brooks* (28), *Lizzie Weston* (67), and the *Hattie* (170). See William Morrison Robinson, Jr., *The Confederate Privateers* (New Haven, 1928), pp. 192 ff., for the capture and condemnation in a Confederate prize court of the *William A. Atwater*, renamed the *Lizzie Weston* by her purchasers.

²³ Of these seventy-eight (78), four claimed British ownership with provisional registry in Confederate ports, but the claim was in all cases disallowed by the court. Cf. note 16 *supra*.

²⁴ *Pioneer* (5); *Crenshaw* (6); *Octavia* (7); *Winifred* (8); *Lynchburg* (9); *Sally Magee* (16).

²⁵ *Agnes H. Ward* (103); *Hattie* (170); *Merrimac* (173); *Stag* (194).

²⁶ *G. H. Smoot* (133).

²⁷ *Sarah Starr* (20); *Henry Middleton* (25); *Aigburth* (26); *Joanna Ward* (73); *General C. C. Pinckney* (99); *Mercury* (141); *Hetiwan* (144); *Neptune* (160); *Emeline* (164); *Angelina* (165); *Maria Bishop* (166); *Margaret and Jessie* (175).

²⁸ *Hallie Jackson* (13); *Evening Star* (168).

Pensacola,²⁹ 4 from Mobile,³⁰ 11 from New Orleans,³¹ 4 from Galveston,³² and one from La Salle, Texas.³³ Three of the Confederate vessels were owned by men who were trying to escape from the Confederacy and were restored to their owners by the prize court.

The *General C. C. Pinckney* (99) was a small schooner of 38 tons. She had been purchased in Charleston by a tailor who was in business there. A native of Prussia, and professing loyalty to the Union, he decided to flee the Confederacy. Sending his wife on ahead to Nassau, he sold his property and invested his small capital in the schooner and a cargo of cotton and rosin, which he had put on board. He sailed from Charleston with the intent of finding the blockading squadron and giving himself up as a way of escaping from the city.³⁴ The district court declared the vessel and cargo prize of war, on the grounds that the vessel and cargo were property of an enemy state, that the owner had "assumed allegiance to that government by covering his property with the protection of the confederate flag, and of ship's documents from the enemy government," and that even if he could maintain "that he was, in sentiment, a loyal subject of the United States, he would stand disqualified from appearing in a prize court to question the legality of the seizure of his property acquired during the war, in an enemy country, by trade with the enemy."³⁵ Judge Nelson, however, reversed

29 *Sarah and Carolina* (52); *Olive* (62); *Lizzie Weston* (67).

30 *Edward Barnard* (41); *Henry Lewis* (59); *Jesse J. Cox* (95); *New Eagle* (107).

31 *Mary Clinton* (15); *Osceola* (56); *Captain Speddon* (58); *A. J. View* (61); *Major Barbour* (68); *Garonne* (70); *Wave* (72); *Pioneer* (78); *Advocate* (63); *Express* (64); *Gipsy* (65).

32 *Velasco* (18); *Falcon* (22); *Shark* (24); *Venus* (55).

33 *J. G. MacNeill* (75).

34 Deposition of Herman Koppel filed under date of May 27, 1862, in the file of *General C. C. Pinckney* (99). See also claim and answer under date of June 24, 1862.

35 Blatchford, *Prize Cases*, p. 279.

the decree in the circuit court on the basis that he thought "the case is brought fairly within the rule which has been applied in several cases, that the withdrawal of the property, under the circumstances stated, does not subject it to capture as enemy property."³⁶

The *Evening Star* (168), a sloop of 13 tons, of Savannah, Georgia, and appraised by a naval board at Port Royal at \$10,000, was owned also by two Prussians who sought to flee the Confederacy. On the basis of the evidence presented, Judge Betts ruled that the case was brought under the principle declared by the circuit court in the case against the *General C. C. Pinckney* (99), and decreed that the libel be dismissed and the property restored.³⁷

In the third case, the schooner *Troy* (124), registered in a port in Texas, was captured by the blockading fleet. The vessel was considered unseaworthy and left in the South, but the cargo was shipped to the New York court for adjudication. There vessel and cargo were condemned.³⁸ A month later, the decree was vacated and the property ordered restored to the owner, Kirkpatrick, who had convinced the State Department of his loyalty.³⁹

In recapitulation, of the 173 vessels the nationality of which is identified in the prize papers, 74 were of Confederate registry.⁴⁰ To these may be added two vessels registered in the North but wholly owned in the South, together with the fourteen vessels of foreign registry—thirteen British, one Mexican—determined to be actually Confederate vessels. There remain only five vessels owned in the North, two recaptures bearing

³⁶ *Ibid.*, p. 669.

³⁷ *Ibid.*, p. 584.

³⁸ *Ibid.*, p. 246.

³⁹ See order for vacating decree filed under date of Dec. 10, 1862, in folder of case of Schooner *Troy* (124).

⁴⁰ Doubtless a goodly portion of the 10 unidentified were also Confederate.

Northern registry, one Spanish, one Danish, and seventy-three British, including the six "suspects."

The English ships may be divided into two categories, legitimate neutrals and professional blockade runners, although sometimes the lower and higher courts disagreed on the difficult question of where to draw the line of legitimacy in the more difficult cases. The steamer *Peterhoff* (151), condemned in the district court, was released with her cargo on appeal to the Supreme Court.⁴¹ In the case of the barque *Springbok* (143), condemned with her cargo in the district court, the Supreme Court released the ship, but affirmed the condemnation of the cargo consigned to the account of T. Sterling Begbie.⁴²

T. Sterling Begbie is one of the English names that reappear frequently in the papers of the New York prize court. Owner of the cargo on the *Springbok* (143), he also claimed the ownership of several of the steamers that ran the blockade—the *Memphis* (116), the *Ouachita* (137), the *Gertrude* (157), the *Emma* (172), the *Lady Stirling* (185). The captain of the last-named, Donald Cruikshank, had also been captain of the *Memphis* (116); by the irony of fate, it was the steamer *Memphis*, taken over by the Federal government on appraisal after its capture, that chased and captured the *Ouachita* (137). The *Ouachita* (137) was a small sloop and brought only \$9800 at prize sale in New York.⁴³ Begbie's other vessels, however, were good ones, and they were taken over by the government on appraisal; the *Memphis* (116) was appraised at \$103,000;⁴⁴ another, the *Lady Stirling* (185), was appraised as high as \$135,000.⁴⁵

41 Blatchford, *Prize Cases*, pp. 463-550; Scott, *Prize Cases in the Supreme Court*, III, 1629.

42 Blatchford, *Prize Cases*, pp. 434 ff.; Scott, *op. cit.*, III, 1609.

43 Cf. *venditioni exponas* filed under date of January 20, 1863.

44 Appraiser's report filed in the folder of the *Memphis* (116) under date of Aug. 19, 1862.

45 Appraiser's report in file of case.

Other English names occur frequently. Z. C. Pearson, of Hull, was interested in several vessels. His name first appears as part owner of the barque *Empress* (50).⁴⁶ The *Empress* (50), of something over 426 tons, had sailed from her home port with a cargo of coal, an iron sawmill, and a "complete" iron building for Rio.⁴⁷ At Rio she loaded coffee, consigned to New Orleans or to New York. The captain was instructed to proceed to New Orleans and, if the port were open, to discharge his cargo there; if, however, New Orleans should be blockaded, he was to proceed to New York.⁴⁸ The vessel was picked up in the Mississippi River and condemned, together with her cargo, in the district court at New York for violation of the blockade;⁴⁹ this decree, however, was one of those reversed on appeal to the circuit court.⁵⁰

Pearson was also owner on the register of the steamers and blockade runners, *Stettin* (102), *Patras* (105), and *Ann* (114). The *Stettin* (102) and *Patras* (105) were abandoned to their underwriters, Robert Mackie claiming them in the New York district court as Lloyd's agent there.⁵¹ All three carried arms, along with the usual assorted cargo of a blockade runner. The *Stettin's* (102) cargo had been shipped by Z. C. Pearson, owner of the vessel, together with Leech, Harrison and Forwood, of Liverpool, who signed a charter party to pay £5 per ton of 20 cwt and 10 per cent primage.⁵² Pearson alone had shipped the cargo on the *Patras* (105).⁵³ No bills of lading or invoices were

46 16/64 was owned by John Broomhead, common Brewer and Maltster, and 16/64 owned by Ralph Jackson, Gentleman. Register in file of case.

47 Bills of lading No. 6 and No. 7 in folder of barque *Empress* (50).

48 Letter D from Messrs. Wm. Moon & Co., charterers of the vessel, to the captain, filed with ship's papers in folder of case.

49 August 12, 1862.

50 Blatchford, *Prize Cases*, p. 659.

51 Claim and answer of Robert Mackie, June 12, 1862, in file of *Stettin* (102); claim and answer, June 30, 1862, in file of *Patras* (105).

52 Charter Party, marked C in ship's papers in folder of *Stettin* (102).

53 Manifest of goods, in file of ship's papers of *Patras* (105).

found on the *Ann* (114), for they were destroyed by the master when the blockading vessels were sighted.⁵⁴ All three were condemned in the district court. Mackie appealed the two cases in which he was interested to the circuit court, but the decrees were there affirmed.

Leech, Harrison & Forwood were interested in two other blockade runners that were sent by their captors to the New York prize court. They owned the *Scotia* (134), a small steamer captured off the coast of South Carolina near Bull's Bay on October 24, 1862, while attempting to run into Charleston from Nassau with an assorted cargo of groceries, drugs, boots and shoes, harness and sole leather, hardware, tin, cotton cards, hosiery, dry goods, cloths, blankets, etc.⁵⁵ The capture of the steamer *Sunbeam* (127), actually a small sailing vessel, off Cape Fear en route from Liverpool to Matamoras, also brought before the New York prize court goods shipped by Leech, Harrison & Forwood.⁵⁶ The court was not convinced that she was so close to Wilmington, North Carolina, because of the stress of weather and the necessity of immediate succor alleged by the claimant. Both vessel and cargo were condemned, and the circuit court upheld the decision.⁵⁷

This case brought into the net the property of still other British merchants interested in blockade running, for the *Sunbeam* (127), owned by Henry Lafone, of Liverpool, carried cargo consigned by a number of individuals and firms. Henry Lafone himself appears more frequently in the New York prize papers as a shipper of guns and ammunition than does even the notorious S. Isaac, Campbell and Company. The *Sunbeam* (127) had carried on deck four mounted cannon, three of which

⁵⁴ Blatchford, *Prize Cases*, p. 242; claim and answer of Z. C. Pearson under date of Sept. 9, 1862, in folder of *Ann* (114).

⁵⁵ Cf. register and deposition I, question 14, filed in folder of *Scotia* (134).

⁵⁶ Bills of lading No. 2, 3, 4, in ship's papers in file of *Sunbeam* (127).

⁵⁷ Blatchford, *Prize Cases*, pp. 316-323, 656.

were either thrown or blown overboard during a storm; the cargo also included 9 cases of swords, 497 boxes of fixed ammunition, 5 boxes of percussion caps and 50 cases of Enfield rifles.⁵⁸ Lafone claimed the whole cargo though much of it had been consigned by other merchants.⁵⁹ He appears again as owner of a cargo of arms shipped on the steamer *Antona* (155), also owned in Liverpool and seized off Florida en route for Matamoros,⁶⁰ and as charterer of the cattleboat *Tubal Cain* (115), which was captured off Charleston, laden with an assorted cargo of arms, ammunition, and military supplies.⁶¹ Henry Lafone was also owner of the steamer *Emma Henry* (189), taken as prize on December 8, 1864, off Wilmington, with a cargo of 600 bales of cotton. She was a new vessel, built in Glasgow that same year, and this was her first return trip through the blockade. She made a good prize; the government took her on her appraised value of \$85,000, and her cargo of cotton sold at auction in New York for \$209,869.01.⁶²

S. Isaac, Campbell and Company of London were the shippers of arms and ammunition on the *Stephen Hart* (54) and the *Springbok* (143). The *Stephen Hart* (54) had been picked up in the end of January in 1861, 25 miles off Key West on a voyage from London to Cardenas, Cuba, ostensibly on a voyage between two neutral ports, and sent to the New York prize court by her captors.⁶³ The inspection of her cargo by the prize

⁵⁸ Deposition of George C. Mitchell, mate, and Joseph Teasdale, engineer, in file of *Sunbeam* (127).

⁵⁹ Register, bills of lading, and invoices in file of *Sunbeam* (127), also claim and answer of Lafone.

⁶⁰ See claim and answer in file of case.

⁶¹ Cf. claim and answer of Henry Lafone under date of Sept. 9, 1862, and ship's papers in folder of *Tubal Cain* (115).

⁶² Cf. register of steamer *Emma Henry* (189) in file and deposition of E. C. Reed, master, also prize commissioners' report on vessel and cargo.

⁶³ *Prize Commissioners' Register*, A, 57.

commissioners revealed mostly arms, ammunition, and army supplies including shoes, mixed gray army cloth for uniforms and 625 gross of brass buttons "for infantry, artillery, and cavalry, for the rebel army, marked C. S. A."⁶⁴ The ship and her cargo were libelled on February 18, 1862, three days after the filing of the depositions *in preparatorio* of members of the ship's company. Almost ten months later, however, the mate, as the result of the persuasion of his wife, a "loyal woman," asked permission to amplify his original testimony before the prize commissioners. He then told the story of how he had been employed by S. Isaac, Campbell and Company because of his knowledge of the Southern coast and the navigation of the blockaded ports. He had gone to the office of the company, and there had met Mr. Isaac, the head of the firm, Captain Hughes (sic), the Confederate commercial agent, and William L. Young. A South Carolina captain had questioned him on his knowledge of the Southern coast, and he was then hired. He had first been assigned to the *Gladiator* and then to the *Stephen Hart* (54) and had been instructed by Captain Hughes (sic) to proceed to Cuba to work under the instruction of Charles J. Helm, the Confederate agent there. The cargo was also consigned to Helm, and was to be transshipped into a steamer which could more easily run the blockade.⁶⁵ Both the *Stephen Hart* (54) and the *Springbok* (143) were condemned by the New York prize court, and the decrees as to their cargo were affirmed on appeal to the Supreme Court.⁶⁶

Other British owners of more than one vessel brought into the jurisdiction of the New York prize court were John Rich-

⁶⁴ Appraiser's report filed under date of March 19, 1862, in file of the case of the *Stephen Hart* (54).

⁶⁵ Supplementary deposition of Chadwick filed under date of October 31, 1863, in file of case. The Captain Hughes referred to was Captain Caleb Huse, Confederate purchasing agent abroad for ordnance supplies. See Caleb Huse, *The Supplies for the Confederate Army* (Boston, 1904), p. 24; cf. also Owsley, *King Cotton Diplomacy*, p. 384.

⁶⁶ Blatchford, *Prize Cases*, pp. 389-434, 434-463; Scott, *op. cit.*, III, 1588, 1609.

ard Armstrong and Henry Gerard, owners of the ship *Alliance* (96) and the ship *Gondar* (98).⁶⁷ Both ships were seized when Beaufort, North Carolina, was captured. Both were condemned in the district court, but were released on appeal to the circuit court on the ground that "there was no actual blockade of the port of Beaufort at the time of the entry therein" of the ships.⁶⁸ Less lucky was Edward Pembroke, of London, a member of the firm of Stringer, Pembroke Company who lost two vessels and their cargo—the steamer *Granite City* (150), captured March 22, 1863, fifty miles off Eleuthera Island in the Bahamas, and the steamer *Charlotte* (193), captured off Cape Fear on January 1, 1864.⁶⁹ Cowlan Gravely, a Yorkshireman temporarily residing in Charleston, at the outbreak of the war bought several Confederate vessels,—the schooner *Aigburth* (26), formerly the *Charlotte Ann* of New Bern, North Carolina; the schooner *Princess Royal*, which cleared New Bern July 2, 1861, with naval stores for Liverpool, but was struck by lightning and forced to return for repairs; the brig *Sarah Starr* (20), which also cleared with naval stores for Liverpool; the schooner *Prince of Wales*, which cleared for Havana with a cargo of rice; and the *Sir Robert Peel*.⁷⁰ Two of them, the *Aigburth* (26) and the *Sarah Starr* (20), were seized as prizes on August 7, 1861, and sent to New York for adjudication. There both were condemned as enemy property, the court declaring "that the claimant Gravely, in the character of a neutral and a British subject by birth, was, within the purview of the public law, in his mercantile relations, an enemy of the United States."⁷¹ Another Englishman to lose ship and cargo was

67 Registers in files of the cases of the *Alliance* (96) and *Gondar* (98).

68 The *Alliance* (96) entered Beaufort, Aug. 22, 1861, and the *Gondar* (98) Aug. 27, 1861; Blatchford, *Prize Cases*, pp. 262, 266, 646, 649.

69 Registers in the files of the respective cases.

70 Exhibit No. 2 filed with ship's papers of the *Aigburth* (26) listing the ships purchased by Gravely and his interest in their cargoes.

71 Blatchford, *Prize Cases*, p. 78.

William I. Grazebrook, of Liverpool. His ship, the steamer *Nicolai I* (149), painted a lead grey, tried to run the blockade at Charleston, carrying from Nassau gun barrels, 16½ tons of powder, salt, and soap. She was captured three miles from land, ten miles southward off Little River, North Carolina, March, 1863.⁷² A cargo of cutlery, swords, brandy, and surgical instruments, shipped by Grazebrook, ostensibly for Matamoras, was captured on the steamer *Sunbeam* (127), as mentioned above and also condemned.⁷³

It was at Nassau that the blockade-runners clustered most thickly, and it was there that concentration of ownership was significantly developed. In Nassau cases the names of three firms—Adderly, Sawyer & Menendez, and Saunders and Son—appear almost to the exclusion of all others. In a number of cases, to be sure, the New York court refused to recognize their ownership, declaring the prize to be Confederate property. Members of the Adderly family were the registered owners of several famous blockade runners; the steamer *Ella Warley* (88),⁷⁴ the steamer *Nassau* (109),⁷⁵ known also as the *Theodora* and the *Gordon* and previously owned by John Fraser and Company of Charleston, and the schooner *Sue* (153).⁷⁶ Adderly also fitted out the *Minna* (145), owned in Quebec,⁷⁷ while one of the firm's clerks was registered as the owner of the *Belle #1* (90).⁷⁸ In the case of the schooner *Mary Teresa* (100), provi-

⁷² Register, affidavit of prize master, and auctioneer's report on cargo in the folder of the *Nicolai I* (149).

⁷³ Letter # 5 giving invoice of Grazebrook's shipments in ship's papers of *Sunbeam* (127).

⁷⁴ Register of steamer *Ella Warley* (88) names as owner Edwin Charles Adderly, nephew of Henry Adderly.

⁷⁵ Register of steamer *Nassau* (109) names as owner Augustus John Adderly, son of Henry Adderly; cf. also deposition VI of Thos. Southmayd, engineer, in file of case.

⁷⁶ Register of *Sue* (153) lists Augustus John Adderly as owner.

⁷⁷ Bills of lading and invoices in ship's papers of *Minna* (145).

⁷⁸ Deposition I, 14, in file of the *Belle #1* (90).

sionally registered at Nassau in the name of her mate, Edmund Gardner, a Charleston merchant, the court held:

It is quite clear upon the registry that the legal ownership of the vessel was in a resident of Charleston, South Carolina. . . . But, in reality, she most probably was the property of Adderly and Company, of Nassau, whose practices in like methods of evading the blockade of the southern ports are flagrantly notorious.⁷⁹

Sawyer and Menendez were named as the owners of the *Levi Rowe* (139) and the *Flash* (94); Menendez owned the *Florida* (142) with Henry Rowland Saunders according to the register, and Saunders was named as the owner of the *Anne Sophie* (118) and the *Albion* (47).⁸⁰ The *Albion*, a schooner of 71 tons, was actually owned in Savannah. The captain and mate owned five-eighths of her shares and three-eighths were owned by business men in Savannah, among whom was Battersby.⁸¹ This probably is the William Battersby of Messrs. W. Battersby & Company of Savannah, who with his brother, Joseph, were partners in the firm of J. & W. Battersby of Manchester. They were the claimants of the *Cheshire* (48), condemned as prize in the New York court, and despite their persistence in appealing, the decree was affirmed in both the circuit court and the Supreme Court.⁸²

With few exceptions, the ownership of the Confederate ships, other than steamers, was widely dispersed. John Fraser and Company of Charleston may have actually owned many of these ships. They had owned the *Ella Warley* (88) and the

⁷⁹ Blatchford, *Prize Cases*, p. 287.

⁸⁰ Registers in folders of respective cases.

⁸¹ Deposition III, 9, in file of the *Albion* (47).

⁸² Christy, the mate of the *Albion* (47), in his deposition mentioned Baldwin as well as Battersby as part owner of the ship. It was Baldwin who was reported by Stone, the supercargo aboard the *Cheshire* (48), to have sold that ship (*Cheshire*) to Battersby. See Blatchford, *Prize Cases*, p. 154.

Nassau (109), which when captured were claimed by the Adderlys. Whether the sale was bona fide, it is impossible to determine on the evidence here. They were also known as the owners of the *Kate* (174), the papers of which are missing, and the *Margaret and Jessie* (175), which was registered in the name of the Charleston Exporting and Importing Company. Almost a third of the Confederate ships were owned in whole or in part by their captains,⁸³ whereas only four of the English ships were owned by their masters.⁸⁴ There was also a greater tendency for American vessels, both Union and Confederate, to be owned by several owners on shares. The schooner *Hannah M. Johnson* (10) of Greenport, L. I., of 94-53/95 tons and employed mainly in coastal trade and fishery, had sixteen owners, the shares being divided into thirty-seconds; her value on appraisal in New York was only \$3500.⁸⁵ The shares of the schooner *Lynchburg* (9), of 235-37/95 tons and registered in Richmond, were divided into one hundred twenty-sixths; she was claimed by twenty-two owners. She, too, was of no great value, bringing her captors only \$3000 at a prize sale in New York.⁸⁶ Several of her owners, however, owned shares in other prizes from Richmond. David Curry, the largest shareholder in the *Lynchburg* (9) (30/126), also owned the barque *Octavia* (7), 30/126 of the schooner *Crenshaw* (6), and one-quarter of the barque *Sally Magee* (16). The members of Crenshaw & Company of Richmond owned the barque *Winfred* (8), besides shares in the schooner bearing the family name (6) and in the *Lynchburg* (9). The names of the Worthams, also, and of a Davenport, appear repeatedly in the registry of these Richmond ships brought into the New York prize

⁸³ Twenty-three.

⁸⁴ *Tropic Wind* (19); *Argonaut* (36); *Mary Jane* (152); *Blenheim* (195).

⁸⁵ Appraiser's report filed under date of Aug. 15, 1861, and the register in file of case *Hannah M. Johnson* (10).

⁸⁶ Register and prize commissioner's bill in file of case of the *Lynchburg* (9).

court.⁸⁷ In two other cases, in the New York prize papers, does an owner of a Confederate ship appear to be interested in more than one vessel. A Mr. Tallant, of New Orleans, owned a few fishing boats jointly with their captains. These were the small sloops, *Osceola* (56), *Advocate* (63), and *Express* (64), none of which exceeded 37 tons.⁸⁸ The fishing was done on shares; the boat's share of every \$100 earned was \$40, the remaining \$60 being divided equally among those on board; according to the deposition of one of the men sent to New York as a witness by the captors, a man could earn \$50 to \$60 a month during the season.⁸⁹ A Mr. William Creevy, also of New Orleans, named in the Confederate register for the schooner *Garonne* (70) as its owner, was said to be also the owner of the sloop *Pioneer* (78).⁹⁰

In point of size and type the vessels brought into New York for adjudication by the prize court were a variegated assortment. All types were represented, from the small sloop of twelve or thirteen tons to the full-rigged ship of almost eight hundred tons. Brigs and brigantines, barques and barquentines, as well as vessels propelled by steam, sailed up the Narrows, under the command of prize masters, to drop anchor near the New York Navy Yard in Brooklyn and there await the inspection of the prize commissioners. By far the most numerous were the schooners; in fact, just over half the prize vessels sent to New York were in this category. They varied considerably, however, in size, ranging from the *Maria Bishop* (166), out of Charles-

⁸⁷ Cf. registers in the files of the following cases: *Octavia* (7), *Crenshaw* (6), *Lynchburg* (9), *Winifred* (8), and *Sally Magee* (16).

⁸⁸ It may be an error to assume that these ships were all owned by the same person, for the spelling of the name on the licenses varies; yet variable orthography was by no means unusual at the time. The license of the *Osceola* (56) names John Tallant of New Orleans, the license of the *Advocate* (63), John E. Tallon of New Orleans, and the *Express* (64), John B. Tallon of New Orleans.

⁸⁹ Deposition I, 26, in file of the case of the *Osceola* (56).

⁹⁰ Register in file of the *Garonne* (70) and deposition I, 7, in file of *Pioneer* (78).

ton, of 12-33/95 tons, to the *Forest King* (14), out of New Bedford, of 366-10/95 tons. Steamers were the second most numerous class, but their total was less than half that of the schooners. Sloops followed, as not too close a third, with barques and brigs tying for fourth place, but together just equalling only 4/5ths the number of sloops. Fifth and last place went to the queen of them all, the square-rigged ship; only four of these vessels were sent to New York, although five came up for adjudication; the fifth, the *Thomas Watson* (111), was run ashore and burned and never reached the harbor.⁹¹

The majority of the vessels for which there are these data, were under two hundred tons.⁹² Even the steamers were small. The largest of them was probably the *Ella Warley* (88) of 1041.77 tons gross, though her registered tonnage allowing for "propelling space" was only 576.13.⁹³ Several were mere fishing vessels, picked up in the Mississippi in November, 1861; they ranged between 20 and 40 tons.⁹⁴ Several were coasters, such as the schooner *Captain Speddon* (58), captured in the Mississippi Sound while carrying lumber from Harmsborough to Biloxi, and the steamer *Henry Lewis* (59), carrying an assorted cargo of sugar, molasses, linseed oil, window glass, and dry goods from New Orleans to Mobile.⁹⁵ Others had been diverted from their proper function in the coastwise trade and were employed on runs between blockaded ports and Cuba or

91 93 schooners, 40 steamers, 25 sloops, 10 barks, 10 brigs, 5 ships.

92 83 vessels were under 200 tons; there are no accurate data on the registered tonnage of 42 ships.

93 Cf. register of *Ella Warley* (88); the *Memphis* (116) with a registered tonnage of 791.74 tons had only a gross tonnage of 1009.79 tons, but a smaller reduction in space for propelling power.

94 Sloop *Osceola* (56), 36 and 48/95; *Advocate* (63), 29 and 84/95; *Express* (64) 23-78/95.

95 *Falcon* (22) and *Shark* (24) carried assorted cargo and sugar, salt, coffee, whiskey, rope, twine, etc. from Berwick Bay to Galveston. *Venus* (55) also owned in Galveston was carrying lead, tin, copper, and wool from Brazos Santiago to Berwick Bay when captured.

the Bahamas. Among these was the schooner *Lucy Holmes* (110), of Charleston; of about 95 tons, she had formerly been used in the rice trade, plying between Charleston and Savannah. When captured on May 27, 1862, she was trying to take out cotton from Charleston to Nassau. Another in the same category was the schooner *Jeff Davis* (140), formerly the *Reindeer*, of 108 tons, captured in the Gulf of Mexico on September 17, 1862, on a run from Houston to Havana with a cargo of cotton.

During the first year of the blockade the craft brought into the New York prize court were, on the whole, comparatively large sailing vessels. Most of them had been caught unawares by the blockade in the midst of a regular voyage.⁹⁶ The next group was a series of vessels that had attempted to transfer to British registry.⁹⁷ Only two steamers were picked up in this first year of the blockade, these were the coaster *Henry Lewis* (59) from New Orleans for Mobile, and a British steamer, the *Labuan* (71); the latter on a voyage from Hull to Matamoras was released by the court.

As the blockade progressed, two types of blockade runners became more usual, the steamer and the schooner of under 100 tons. The bulk of these steamers were British; in fact, thirty out of the forty brought before the New York prize court bore British registry.⁹⁸ The small schooners were more frequently

⁹⁶ The *Hiawatha* (2) of 445.32 tons carrying tobacco from Richmond to Liverpool; the *North Carolina* (3) of 573-90/95 tons returning in ballast from Havre to Hampton Roads; the *Pioneer* (5) of 743 tons carrying salt from Liverpool to City Point, Va. There were also ships like the *Winifred* (8), the *Lynchburg* (9), the *Forest King* (14) carrying coffee back from Rio.

⁹⁷ *Sarah Starr* (20); *Prince Leopold* (23); *Aigburth* (26); *Edward Barnard* (42); *Ezilda* (43); *Delta* (46).

⁹⁸ *Labuan* (71); *Ella Warley* (88); *Stettin* (102); *Elizabeth* (104); *Patras* (105); *Nassau* (109); *Ann* (114); *Tubal Cain* (115); *Memphis* (116); *Sunbeam* (127); *Anglia* (131); *Scotia* (134); *Ouachita* (137); *Douro* (147); *Nicolai I* (149); *Granite City* (150); *Peterhoff* (151); *Antona* (155); *Gertrude* (157); *Emma* (172); *Kate* (174); *Banshee* (176); *Annie* (184); *Lady Stirling* (185); *Armstrong* (187); *Vixen* (188); *Emma Henry* (189); *Charlotte* (193); *Blenheim* (195); *Pevensey* (197).

Confederate-owned and were employed running cotton and naval stores out of the blockaded ports and inlets. Logically and as was to be expected, such of the small schooners as bore British registry were from ports in the Western Hemisphere, chiefly Nassau and Nova Scotia.⁹⁹

For the most part, the Confederate steamers were owned by companies. Thus, the blockade runner *Stag* (194), captured on her second voyage, was owned by John Fraser & Company of Charleston.¹⁰⁰ The notorious *Margaret and Jessie* (175) was registered in the name of the Charleston Exporting Company. The *A. D. Vance* (181), formerly the *Lord Clyde*, was owned by Power, Low & Company of Wilmington, though it carried its previous registry from Dublin.¹⁰¹ The *Merrimac* (173), according to the deposition of her captain, belonged to a company in Wilmington, although registered in the name of Richard Bradly, of that place. The schooners, on the other hand, seem to have been small private ventures in the lucrative, though risky, business of blockade running, and therefore often not so lucrative.

Since the choice of prize court lay largely with the captors, there was no localization of place of capture of the 183 prize vessels sent to New York. They had been taken at points all along the blockaded Confederate coast, from Newport News and Hampton Roads at the entrance to the Chesapeake to the mouth of the Rio Grande at Matamoras. Some prizes

⁹⁹ *Louisa Agnes* (27), 50 tons from Nova Scotia; *Annie* (146), 45 tons from Nassau; *Mary Jane* (152) 50 tons from Halifax.

¹⁰⁰ The *Stag* (194) was registered in their name; it was one of the ships bought by Bulloch for the Confederate Government to run the blockade and which Bulloch thought "ought to be kept registered in the names of private persons, otherwise serious embarrassment may arise [with England]." James D. Bulloch, *The Secret Service of the Confederate States in Europe* (London, 1883), II, 239-40.

¹⁰¹ See answer to question 6 of deposition of Joannes Wyllie. Actually, Power, Low & Co., had bought an half interest in the ship from its owner, the State of North Carolina. Letter of Z. B. Vance to J. A. Seddon, Jan. 7, 1864, printed in *O. R.*, series IV, vol. 3, p. 10.

were picked up further afield; the *Prince Leopold* (23), formerly the *Isabel*, was detained by revenue officers in New York Harbor itself; another, the brig *Isabelle Thompson* (167), was seized in the Atlantic off St. George's Bank on a voyage from Nassau to Halifax.¹⁰² Three were picked up in the West Indies, the *Granite City* (150), captured fifty miles off Eleuthera Island, officially had cleared from Nassau for St. John's, New Brunswick, but carried a Wilmington clearance for cotton, dated twelve days before her capture; the steamer *Gertrude* (157), seized off Eleuthera, was bound ostensibly for St. John's but actually for Charleston,¹⁰³ and the steamer *Peterhoff* (151) taken as prize February 25, 1863, fifty miles off St. Thomas, was on a voyage from Falmouth to Matamoras with an intermediate stop at St. Thomas. The *Peterhoff* (151) became a *cause célèbre*; condemned in the district court, she was released on appeal to the Supreme Court. The ships picked up furthest afield were also released: one, the Danish barque *Jurgen Lorentzen* (53), was picked up a thousand miles from port, en route from Rio to Havana; the other, the barque *Saxon* (177), was seized in the harbor of Angra Pequena on the West Coast of Africa.

Although the number of prize ships brought into New York was less than one-fifth the total number of prizes made during the war,¹⁰⁴ the evidence in these papers strongly corroborates the belief that Nassau was the heart of the blockade-running business. Over a fourth of the ships captured were sailing to or from Nassau; in twenty-six cases Charleston was the other terminal port, in eight cases Wilmington; one was en route from Savannah; three were ostensibly on runs between Nassau and Halifax or Baltimore; and in fourteen cases the goal was a

102 She was released. Blatchford, *Prize Cases*, p. 377.

103 Both were condemned for violation of the blockade; the *Granite City* (150), June 24, 1863, and the *Gertrude* (157), July 21, 1863.

104 Total number of prize ships reported by Secretary Welles in his *Annual Report*, December, 1865, was 1022.

Confederate port unspecified.¹⁰⁵ At least so far as the New York prize court was concerned, Bermuda was a much less important center of the traffic. The Bermuda run was to Wilmington, particularly from the summer of 1863 on, when she was one of the few ports not yet seized by the Union forces, and eleven vessels were caught attempting it. Twenty-six of the prizes (about half the number using Nassau) were either coming from or going to a European port. All but two of these ports were in the British Isles, and the two exceptions occurred at the very beginning of the blockade, with the capture of ships engaged on voyages undertaken before its declaration. The ship *North Carolina* (2) was taken prize at the end of May, 1861, returning in ballast from Havre; the barque *Octavia* was captured May 18, 1861, on a voyage to Bremen. Eight prizes had cleared from Rio de Janeiro, but no vessels with Rio clearances were brought into New York after the close of 1861. Matamoras figured in fourteen cases, but in eight of them at least this Mexican border port was used to disguise clearance for a Confederate port which was the actual destination.¹⁰⁶

The vast majority of the prizes were captured on purely blockade-running ventures, but very often their papers indicate the type of voyage and trade in which they were engaged prior to the blockade. The captain and members of the ship's company who were brought to New York as witnesses in the custody of the prize master were examined by the prize commissioners on

105 Fifty-two ships in all.

106 *Soledad Cos* (37) had passed Matamoras and was steering for a Gulf port when captured; the *Esilda* (43) was actually bound for Baratania Bay, the *Antona* (155), for Mobile, and the *Sunbeam* (127), for Wilmington, N. C.; the *Delta* (46) and the *Nymph* (171) were captured off Galveston; the *Major Barbour* (68) off Grand Caillou, La., and the *Water Witch* (135) 1 mile from Aransas Harbour. The *Wave* (72) and the *Tampico* (162) had sailed from Confederate ports. In three of the remaining cases, vessel and cargo were released by the New York court, the *Labuan* (71), the *Glen* (169), and the *Sybil* (186). In a fourth, the *Peterhoff* (151), the Supreme Court reversed the decree of the lower court and restored vessel and cargo.

the Standing Interrogatories, which included the following questions:

To what ports and places was the vessel, concerning which you are now examined, bound on the voyage wherein she was taken and seized? Where did the voyage begin, and where was the voyage ended? What sort of lading did she carry at the time of her first setting out on the voyage, and what particular sort of lading and goods had she on board at the time she was taken and seized? In what year and in what month was the same put on board? Do you or not know she had on board during her last voyage, and when, goods contraband of war, or otherwise prohibited by law, and what goods? Had the vessel of which you are examined any passport or seabrief on board, and from whom? To what ports or places did she sail during her last voyage, before she was taken? Where did her last voyage begin, and where was it to have ended? Set forth the kind of cargoes the vessel has carried to the time of her capture, and at what ports such cargoes have been delivered. From what ports, and at what time, particularly from the last clearing port, did the said vessel sail, previously to capture?¹⁰⁷

In addition the ship's papers provide abundant and complete information on the cargoes carried. Not only are invoices, bills of lading, and manifests to be found, but in every case brought into court, appraisals were made of the cargo.

So far as the blockade-runners are concerned, the details do little more than confirm a story already well known. Ships running out of Confederate ports carried one or at most two or three types of goods. In order of frequency these commodities were cotton, turpentine and other naval stores, and tobacco. In the first months of the blockade, however, King Cotton appeared in the New York prize court less frequently than did tobacco or naval stores. In fact, from May through December, 1861, only four of the twelve outwardbound ships captured were carrying cotton. The *Hiawatha* (2) carried thirty-two

¹⁰⁷ Standing Interrogatories, 11, 12.

bales when seized in May of 1861, but her cargo was principally tobacco. In the same month the *Hannah M. Johnson* (10), out of New Orleans, carried 80 bales of cotton. In August, the *Henry C. Brooks* (28), captured off Hatteras Inlet, was carrying 59 bales of cotton in addition to nine hundred barrels of turpentine and seventy-odd barrels of naval stores. Even less significant were the two bales of cotton seized with the *Soledad Cos* (37) in September, 1861. With the opening of 1862, the picture changed abruptly. In January, the yacht *Gipsy* (65) was caught while trying to run out of Pascagoula with over a hundred half-bales of cotton. In the same month, the *Lizzie Weston* (67), a Northern ship that had been captured by the Confederates and condemned as prize by the Confederate prize court in Florida, was captured trying to run out from Apalachicola with a cargo of 300 bales of cotton. In the period from January through March, 1862, a total of eight vessels captured while trying to run out through the blockade were brought into the New York court; four of these eight were carrying cotton. The largest amount of cotton on any one prize brought to the New York court was found aboard the *Memphis* (116) in July, 1862, when she was captured trying to take 1521 bales of cotton and 500 casks of rosin out of Charleston. The number of cotton cargoes slowly increased; by 1863, cotton had outstripped turpentine and tobacco cargoes both in frequency and in quantity.

The papers shed no direct light on the role of the embargo as described by Professor Owsley, in *King Cotton Diplomacy*. It should perhaps be remarked that of the eight vessels brought into the New York court during the period from January to March, 1862, when, according to Owsley, the embargo was still in force, four were carrying cotton, and as the principal cargo. It is quite possible that the fact that fifty per cent of the prizes during this period were carrying cotton may have been accidental, reflecting the vagaries of a blockade, the effectiveness of which is a moot point. Yet, especially if one accepts Professor Owsley's theory of the ineffectiveness of the blockade, there

seems little reason to suppose that vessels carrying cotton did not represent a steadily increasing proportion of the Confederacy's foreign trade. If analysis of the papers of the various prize courts, in conjunction with study of other materials, should establish the fact that they did, the notion of an "air-tight embargo" on cotton exports would need revision. So far as the facts in these court papers go, the gradual increase in the relative number of cases involving cotton might reflect the reduction of European stocks of cotton and the beginnings of the cotton famine rather than any deliberate change of policy on the part of the Confederacy.¹⁰⁸

Unlike vessels trying to run out through the blockade, ships captured trying to enter Confederate harbors usually carried a widely assorted cargo. In a few cases, single cargoes were shipped; such were the salt cargoes, coming from Liverpool or the West Indies.¹⁰⁹ In assorted cargoes, also, salt was the item most frequently found, with coffee perhaps second, and sugar, arms, soap, drugs, and dry goods close runners-up. The Confederacy with its former dependence on the North for manufactured products was clearly at a disadvantage during the war; manufactured articles for army and civilian needs were sorely wanted. Many of the ships carried personal and business letters stressing the need for particular products; one letter from a daughter urging her father to return to Charleston in May, 1862, stated that no cotton could be shipped except for government purposes and unless pledged to be returned in goods in which the government was to have first choice at auction. She emphasized the danger of returning in a small boat because "the blockaders were thick" and many small vessels were burned to prevent their falling into the enemy's hands. She closed with the statement that "Mother wants stockings, calico handkerchiefs

108 Frank L. Owsley, *King Cotton Diplomacy* (Chicago, 1931), especially chapters II, V, and VIII.

109 *Delta* (46) from Liverpool; *Mars* (69), *Florida* (142), *Annie* (146), *Antelope* (156), *Rising Dawn* (154) from the West Indies.

drills, linen, spool-thread, shoes, gaiters and booties, slippers, tea, salt, and yeast.”¹¹⁰ In February, 1864, government control of cargoes was made statutory, and the importation of luxuries was prohibited.¹¹¹ Administrative regulations implementing the act of February 6, 1864, were approved on March 5, 1864.¹¹² Under these, any vessel leaving a Confederate port was required to secure a permit for the exportation of cotton, tobacco, military and naval stores, sugar, molasses, or rice, and to carry half of this cargo on government account at stipulated freight rates, to be paid not in cash, but in cotton. The owner of the vessel would return to a Confederate port with half her cargo made up of government supplies, and the remainder to include no articles the import of which was forbidden by the government. Similarly, the shippers had to post bond, undertaking to invest one half their net profits in goods the import of which was not prohibited by law, to be shipped within sixty days after unloading, or alternatively to pay over half their net proceeds in coin or sterling exchange to agents of the Confederate States abroad, receiving reimbursement in cotton at a Confederate port at the rate of 10d. a pound for middling.

Even earlier, some of the ships carried agreements signed by the captain and a Confederate officer stipulating that, in consideration of permission to clear his vessel and its cargo, the captain agreed to return with a cargo of listed articles and sell these to the Confederate States agent or commanding officer of any blockaded port the vessel might enter at the customary market rates. One such agreement listed: castor oil, block tin, pig lead, powder, quinine, allum (sic), salt peter, calomel, morphine, Turkey opium, flax, thread, envelopes and letter paper, coppers, and coffee.¹¹³ Confederate agents abroad were respon-

110 Letter addressed to J. B. Nixon under date of May 5, 1862, filed with ship's papers in folder of steamer *Nassau* (109).

111 *O. R.*, series IV, vol. 3, pp. 78-80.

112 *O. R.*, series IV, vol. 3, pp. 187-189.

113 Agreement dated April 25, 1862, in file of ship's papers of sloop *Annie* (108); also paper No. 11 in file of ship's papers of schooner *Troy* (124).

sible for the procuring of cargoes on some of the ships; these, of course, were mainly army supplies, euphemistically called "hardware", from buttons for uniforms to rifles.¹¹⁴ Purcell, Ladd & Company, a chemical house in Richmond, arranged with Beverly Tucker to buy chemicals and dyes for them in the European market, and it was agreed that the shipment of the order was to be so divided that "An equitable portion of the goods shall come forward in each steamer bringing goods for the Confederate government, beginning with the first ship and continuing till all are shipped."¹¹⁵ Assorted cargoes often included the widest variety of goods as the items carried by the *Major Barbour* (68) indicate: awl blades, shoe thread, calf skins, etc., preserves, linen thread, elastic, white paper, castor oil, jelly, segars, reticules, lace gloves, neckties, powder-puff boxes, cream tartar, nitre and sulphur, codfish, candles, cap linings, percussion caps, etc. To these items may be added these from the cargo of the *Springbok* (143): gingham, cotton goods, dry goods, blankets, collars, shirts, gloves, hose, buttons, sabres, groceries, cloth, rope, leather; and these from the brig *Robert Bruce* (130): cutlery, lead, pig iron, iron hoops, rum, porter, ale, dishes, cutlery, etc.

None of the prize ships brought to the New York court appear to have functioned as packet boats prior to the blockade, but some seem to have followed rather regular routes. The Richmond vessels carrying coffee back from Brazil usually carried out flour; but the *Crenshaw* (6), unable to get flour, began a new voyage to Liverpool with tobacco;¹¹⁶ the *Lynchburg* (9) carried tobacco to New York, took on an assorted cargo of general dry goods, provisions, fish, and machinery for Richmond, and then took a cargo of flour to Rio, returning to

¹¹⁴ Supplementary deposition of Chadwick under date of Oct. 31, 1862, in file of *Stephen Hart* (54); also printed catalogue in folder.

¹¹⁵ Papers B, 4, 5, 7, in ship's papers of steamer *Nuestra Senora de Regla* (89).

¹¹⁶ Deposition of Henry Winters, captain of *Crenshaw* (6), answer to question 11.

Richmond with coffee.¹¹⁷ As with the modern tramp steamer, the availability of cargo determined the regularity or irregularity of the voyage.

Of the men who ran the blockade many exciting tales have been told.¹¹⁸ Adventure, loyalty to the Confederacy, and, most frequently, the prosaic desire for money motivated men in signing up on the blockade runners. The crews were a nondescript aggregation: British and Americans, of course, and then Dutch and Germans, Swedes, Norwegians, and Danes, French, Spanish, Italians, and Portuguese, Negroes, and an occasional Chinaman. In specific cases it is not easy to determine the nationality of the members of the crew. The most reliable source of information on the subject might be supposed to be the deposition *in preparatorio*. In answer to question 1 of the Standing Interrogatories the witness was asked to give his place of birth, his place of residence, the sovereign or government to whom he owed allegiance, and the place of residence of his family.¹¹⁹ However, very few of the ship's company were actually subjected to this questioning; usually only the captain, the mate, and one or two seamen were questioned. These were expected to answer for the rest; in standing interrogatory number 8 they were asked the number of the ship's company, and of what nationality they were. Frequently the answer was, "There were

117 Answer to question 12 in deposition of James C. Blizzard, mate of *Lynchburg* (9); see also deposition of Alexander Soule, captain of *Sally Magee* (16).

118 Cf. F. Bradlee, *Blockade Running during the Civil War and the Effect of Land and Water Transportation on the Confederacy* (Salem, Mass., 1925), James Sprunt, *Tales of Cape Fear Blockade in North Carolina* (Raleigh, N. C., 1902), T. E. Taylor, *Running the Blockade* (London, 1896), William Watson, *The Adventures of a Blockade Runner; or Trade in Time of War* (London, 1892), Augustus Charles Hobart-Hampden, *Sketches of My Life* (New York, 1887), and *Never Caught* (London, 1867), Captain John Wilkinson, *The Narrative of a Blockade Runner* (New York, 1887).

119 Printed in Blatchford, *Prize Cases*, p. 685.

some from almost every nation.”¹²⁰ Attempts at greater precision were not overly successful, as appears when the answers of members of a crew are collated. Germans and Hollanders made equally good “Dutchmen;” Scandinavians were interchangeable; Spanish, “Eytalian,” Portuguese, and French all looked alike to these mariners. To add to the confusion, many were considered American, though foreign born, simply because they had resided in the United States: thus, little Lewis Lavego, the thirteen-year old cabin boy on the brig *Sarah Starr* (20), had been born in Italy but was rated American by virtue of three years residence in Boston; on the same ship, a seaman with the Anglo-Saxon name of Peter Bennett turned out to be a French citizen, born in Bordeaux, though a resident of New Bedford, Massachusetts, for fifteen years.¹²¹

Crew lists and shipping articles also provide information about nationality, but here again it is well to move with caution. “No proof” may appear in the column headed “Place of Birth” on the crew list;¹²² time and again the captain in answering questions about the nationality of his crew replied, “They claim to be”¹²³ One source of difficulty was conscious falsification of the record to elude the navigation laws, which required a certain proportion of nationals among the crew. An interesting side-light on this situation is supplied by the crew list of the American barque *Pioneer* (5), caught in the very early days of the blockade on a voyage from Liverpool to City Point, Virginia. On arrival at Liverpool, all but three of the crew had deserted; the American consul issued a certificate for

120 See for example depositions of mate and captain of steamer *Henry Lewis* (59). The answers recorded in these papers do not bear out the statement in Ella Lonn, *Foreigners in the Confederacy* (Chapel Hill, 1940) on p. 305 “With the exception of one or two Danes, the crews of the runners were either Britishers or Southerners.”

121 Depositions of Lewis Lavego and Peter Bennett in the *Sarah Starr* (20).

122 Crew list in file of schooner *Forest King* (14).

123 Deposition of John Johnson in file of *Elizabeth* (104).

the return voyage attesting to the fact that it had been impossible to secure a crew with the requisite two-thirds of American citizens; the captain, himself a German-born American citizen, testified to the prize commissioners that his crew was made up of Americans, English, "Dutch," and Portuguese; there was also a colored steward.¹²⁴ Colored cooks and Chinese cooks were not unusual, but colored crews seem to have been exceptional. In at least two cases, however, the crew was made up exclusively of Negroes. On the barque *Sally Magee* (16), running regularly between Richmond and Rio, the crew were American Negroes; the captain and mate were white, residents of Virginia. There is no evidence whether these Negroes were free or slave, save in the case of the boatswain, who was a witness before the prize commissioners; he had been born in Curaçao, had lived in New York for six years, and claimed citizenship of the United States.¹²⁵ On the *Mersey* (91), a small schooner bearing a Nassau registration, but with the name *Elizabeth of Charleston* showing through the paint, the ship's company consisted of seven men: the captain and mate, both claiming residence in Nassau; the steward, a German acknowledging allegiance to the Kingdom of Würtemberg; and "four others who were colored persons of Nassau."¹²⁶

The captains were almost all either British or American; some were foreign-born, but either naturalized Americans or at least long-time residents of Britain or America. The term American is used, of course, to cover both Northerners and Southerners, for not all the captains and officers of the blockade runners, or even mere crew members, were Southerners. Frequently in answer to question 1 of the Standing Interrogatories the witness would admit to having been born in a Northern State; many of these had resided for some time in the

124 The Massachusetts-born mate substituted "Germans" for "Dutch", depositions of Capt. Hoecker and Wm. Mason, the mate of bark *Pioneer* (5), and crew list marked B.

125 Deposition of Michael Martin in the *Sally Magee* (16).

126 Deposition of W. H. Sweeting, in file of *Mersey* (91).

South, but others were still residents of New York, New Jersey, or even Maine and Massachusetts. One Northerner, Joseph A. Stillman, ran the blockade at least twice; more accurately he was brought before the New York prize court twice. His first ship, the schooner *William A. Northrup* (51), was captured on Christmas Day, 1861, off the coast of North Carolina, near Wilmington; she had been running in and out of Wilmington since June, 1861. In fact, the captain admitted that he was part owner of the vessel, which was condemned. Four months later this Philadelphian was again brought before the New York prize court as the captain of the schooner *Mary Teresa* (100), captured while trying to run the blockade into Charleston, though ostensibly on a run from Nassau to Halifax. Another Northerner, Captain Mark Stoddard of the sloop *Express* (63), a Connecticut Yankee, admitted taking the oath of allegiance to the Confederacy but stated "he does not consider it binding."¹²⁷ The attitude of such men seems to be one of indifference to the issues of the conflict; it sufficed that money was to be made while it lasted. It was an attitude shared by many of the Southerners, too, for that matter.¹²⁸

Several captains of blockade runners appeared more than once before the New York prize court. Donald Cruikshank, a Scotsman, commanded the steamer *Memphis* (116), one of several vessels belonging to T. Stirling Begbie that terminated their careers as prizes in the New York court. The *Memphis*

127 Deposition of Mark Stoddard in file of *Express* (63).

128 This conclusion is at variance with the opinion expressed in the excellent study by Ella Lonn, *Foreigners in the Confederacy*, *op. cit.*, p. 299. A very interesting letter in the files of the *Memphis* (116) emphasizes this point. In a letter to his wife the writer speaks of prospects of great and unexpected profits.... "if certain cargoes get in safely, I will realize a very handsome sum...do not give yourself smallest uneasiness. I would not take on the highest position in the Confederacy. Sooner or later the whole concern must blow up.... It is my duty as it is my pleasure to share faith in the People among whom I was born during their troubles but I am under no obligation to take office or responsibility in the matter." Letter dated Savannah, July 27, 1862, and marked G in the file of case.

on her first voyage succeeded in making port in Charleston with an assorted cargo of Enfield rifles and other munitions, drugs, and clothing. Eluding the blockaders a second time, Captain Cruikshank had the ill luck, 35 miles out at sea, to fall foul of the U. S. S. *Magnolia*, en route from Key West to Fortress Monroe. Lieutenant Budd, commanding the *Magnolia*, realizing the value of the *Memphis*' cargo of cotton and rosin, convoyed her to New York, where she netted her captors \$510,914.07. Captain Cruikshank nevertheless found further employment with Begbie and was in command of the *Lady Stirling* (185). Captured off Wilmington in October, 1864, and condemned for violation of the blockade, this vessel also made good prize; the ship was taken over by the government on appraisal for \$135,000 while her cargo of cotton and tobacco brought \$374,354.64 at auction.¹²⁹ The captain's further fate remains undisclosed. Perhaps a more famous name was that of Robert Lockwood, whose fame (or notoriety) as a blockade runner was widespread. He was captured on board the *Ella Warley* (88), listed as a pilot from South Carolina. He appeared again before the New York prize commissioners a year and a half later, in November, 1863; he was then captain of an even more notorious blockade runner, the Confederate steamer *Margaret and Jessie* (175), captured while trying to enter the port of Wilmington. He was then imprisoned at Fort Lafayette until the end of the war.¹³⁰

Blockade running was so vital to the existence of the Confederacy, and was a feat so difficult, that several of the important blockade runners were commanded by Confederate naval officers. Only two such cases, however, came before the New York prize court. The *Nassau* (109), which, under her former names *Theodora* and *Gordon*, had figured frequently in United States consular dispatches from Liverpool and Nassau, enumerating vessels in those ports preparing to run the blockade, was cap-

129 Final decree of distribution in file of case.

130 James Sprunt, *Tales of Cape Fear River Blockade*, p. 61.

tured on May 28, 1862, off Cape Fear while attempting to run into Wilmington with an assorted cargo from Nassau. Her commander had been J. N. Maffitt, one of the many Southerners to resign his commission in the U. S. Navy at the outbreak of the war between the states, and who had helped to create the Confederate Navy. He had run the *Nassau* (109), then known as the *Gordon*, out to Nassau; there her owner, John Fraser and Company, had gone through the form of a sale to John Adderly; under British registration and with her name changed to *Nassau*, she had attempted to return under a new captain though with Maffitt's daughter aboard as a passenger.¹³¹ Maffitt himself took over the command of the *Florida*, the well known "commerce-destroyer;" after a heartrending siege of yellow fever, in which he lost his first lieutenant, Stribling, his stepson, most of his crew, and almost his own life, he ran the *Florida* into Mobile;¹³² later he was able to take her out again, in the most daring fashion in what Soley called "The most prominent event in the history of the blockade of Mobile."¹³³ The second blockade runner commanded by an officer of the Confederate Navy was the steamer *Stag* (194). Also owned by John Fraser and Company, she was captured January 20, 1865, off Cape Fear on her second voyage from Bermuda to Wilmington, while under the command of Lieutenant Gayle.¹³⁴

On the whole, it was the lure of gold that seems to have held the most attraction for the men that manned the blockade runners. Considerable information on seamen's wages may be found among the New York prize court papers in the shipping articles, which almost every ship carried. The ships that were caught in the early days of the blockade were not professional

131 Depositions of Thos. Southmayd, George D. Walker, and Florence Maffitt, in file of *Nassau* (109).

132 Extracts from journal of Lieut. J. N. Maffitt, C.S.N. from May 4-Dec. 31, 1862, in *O. R. N.*, I, pp. 763-769.

133 Soley, *The Blockade and the Cruisers*, p. 136.

134 Cf. note 100 *supra*.

blockade runners but vessels engaged in their normal prewar trading activities; their shipping articles are, therefore, a good guide to prevailing wage rates. The information about wages and bonuses paid on blockade runners is more fragmentary; not all of these vessels carried articles, though the bigger ones did. Wages were, on the whole, and quite naturally, higher on the blockade runners, but the chief return derived from payment of bonuses. The British steamer *Memphis* (116), captured in July, 1862, was a vessel of 791 tons with a ship's company of forty-five men, officers and crew. The members of the crew had been promised a bounty of £15 each, in accordance with an agreement signed on board June 16, 1862. Each was to be paid £5 before starting, £5 on safe arrival in a Confederate port, and £5 at any English port made on return from a Confederate port.¹³⁵ The second mate, in his deposition *in preparatorio*, admitted being promised a bonus of £50; the chief officer admitted a promise of a bonus of £100. Captain Cruikshank made no such admission but claimed as his private property two drafts: one for £1,000 drawn by the Bank of Charleston on the Bank of Liverpool, payable to the order of W. F. Moore, Esq., of London; the second, a draft of £500, drawn by John Fraser and Company of Charleston, on Fraser, Trenholm & Company of London and payable to the order of the same person.¹³⁶ Whether or not the draft for £1,000 was a bonus is impossible to say on the evidence available, but the draft for £500 pretty certainly was. Among the papers is the following letter addressed to the captain, enclosing the third of exchange for £500:

Accept enclosed Bill on England drawn by Messrs. Fraser upon their house in Liverpool for £500 as some acknowledgment on behalf of Messrs. Joess & North of your courage and undaunted perseverance in conducting your steamer with their

135 Shipping articles K in file of *Memphis* (116).

136 Order for return of Cruikshank's personal effects filed under date of Aug. 12, 1862, in file of *Memphis* (116).

goods safely to this port, having run the gauntlet against as strong a blockading fleet as never previously experienced, so much the less accomplished its circumvention.

With every wish for your safe voyage to England.

Believe me, dear Sir, yours sincerely,

WM. NORTH, JR.¹³⁷

Messrs. Joess & North were one of three laders of the cargo at Liverpool on its outward journey. If the bill for £1,000, which is missing, was also part of the captain's bonus, it makes the largest paid on any of the ships brought into the New York prize court. In another case, that of the *Banshee* (176), the papers include a letter from the owners to Captain Steele, evidently in response to his effort to extract more money from them. The letter states that by the time of his fourth voyage the captain would have realized £800 and promises that "if the fourth voyage is successfully completed, we will raise your monthly pay subsequently to £120 per month and give you £100 for a successful run in and £200 for a successful trip out."¹³⁸ The *Banshee* was a steamer of only 216 tons, as compared with the 791 tons of the *Memphis* (116).

Among the papers of the steamer *Douro* (147) are a number of agreements, made at Nassau, February 11, 1863, signed by each member of the crew, and attested by three witnesses. The agreement runs: "I agree to run the blockade in the S. S. *Douro* from Nassau to any Confederate port receiving for this a bounty of £— in and another £— for coming out to Nassau payable after the trip either at Nassau or Liverpool." In comparing the bounties promised in individual cases with the wage rates of their recipients, it appears that the ability to dicker, rather than the rate of wages, determined the amount of the promised bounty. The mate, with wages of £12 per month, was

¹³⁷ Letter E in ship's papers in file of *Memphis* (116).

¹³⁸ Letter No. 42 in file of *Banshee* (176). This was one of the vessels operated by the English company represented by Thomas Taylor, author of *Running the Blockade*. The *Banshee* # 2 was the only one he mentions that was brought before the New York court.

promised a bounty of £60 for the round trip; the second mate, whose wages were £7 10s., was promised £24. The steward, though his wages were £9, was promised a bonus of £20, while the carpenter with wages of only £7, was promised the same bonus. The bounties promised individual seamen also showed considerable variation.¹³⁹

No less than bonuses, profits depended on the success of the venture. Indications on this score abound in the papers, though they are necessarily somewhat fragmentary. Information on sums invested, business conditions, freight rates, insurance premiums, commissions, and the amounts realized are frequently stated, generally for the voyage preceding the capture. In some cases, notably that of the *Labuan* (71), the papers contain elaborate calculations. The *Labuan* was chartered by De Jersey & Company of Manchester, though one of the three partners was a merchant of Bremen, to carry cotton from Matamoros to Havana, whence it was to be transshipped to Liverpool. A relation of the Bremen merchant was to act as agent in Matamoros; his instructions were to purchase an initial 5,000 bales and to continue to acquire cotton at the rate of 2,000 bales a month. It was expected that the cotton, purchased at 6½d. per pound for middling, would bring 13½d. in Liverpool. In his deposition, John Atkinson, managing clerk of the firm, estimated that during the three months period of the *Labuan's* detention in the jurisdiction of the New York prize court, she could have carried 6,000 bales of 490 lbs. each from Matamoros. The anticipated expenses, including insurance carried by the firm's Bremen connections, are stated in detail to justify a claim for £54,780 15s.¹⁴⁰

139 Ship's papers No. 32 and following in file of *Douro* (147).

140 Affidavits of John Atkinson, and Johann Hinrich Jansen of Bremen filed with claim and answer of De Jersey & Co., under date of April 25, 1862, in file of *Labuan* (71). The court, in ordering the release of the vessel and her cargo, allowed only \$4,786.30 as damages, principally for coal consumed on the voyage to New York, and the accrued interest thereon. The court, however, ordered the owners of the vessel compen-

The *Labuan* (71) was an enterprize undertaken by professional merchants. Quite different is the case of the *General C. C. Pinckney* (99), owned and captained by a Charleston tailor. Anxious to escape from the Confederacy, Herman Koppel (Coppell) sold all his belongings and invested the proceeds in a schooner of 38-80/100 tons and a cargo principally of cotton. As noted above, he later professed the intention of seeking out the blockading squadron and giving himself up; the district court found against him, but on appeal to the circuit court, his profession of loyalty to the Union was recognized. Among the papers of the case is an almost complete set of receipted bills for cargo, stores, and disbursements totalling something over \$4,000; the vessel itself cost him \$3,000. Hit or miss as the venture seems to have been, it suggests the possibility of the profits that anyone might make, given luck, for the cargo was sold at auction in New York for \$19,278.33.¹⁴¹

The item of luck was most important as the ship's papers on the *J. G. McNeil* (75) reveal. She was a small schooner of 55 tons from Texas, owned by her captain who went into partnership with a Texas planter and two others at Matagorda, to run the blockade. The Texas planter, who carried an affidavit of the clerk of the county court that he had been chief justice of the court for fifteen years, that he was a cotton planter and a gentleman, went along to Vera Cruz as supercargo to dispose of the cotton. She was captured trying to run the blockade back into Matagorda Bay with a cargo of coffee and tobacco, and both vessel and cargo were condemned by the prize court.¹⁴² Among the ship's papers are to be found accounts of the sale of the cotton, the purchase of an insured cargo of coffee and tobacco, bills for ship's stores, expenses, etc.

sated to the amount of \$181,830.60 on the basis of the rate paid for steamers in the United States transport service, including \$50,599.30 in interest. See Commissioner's report filed under date of March 17, 1868, in file of *Labuan* (71).

141 Deposition of Herman Koppel and return of marshal on sale of cargo filed Feb. 18, 1863, in file of *General C. C. Pinckney* (99).

142 See ship's papers in file of *J. G. McNeil* (75).

These are but a few among a number of cases illustrating the business aspects of blockade running. Of a different sort is the case of the schooner *Lynchburg* (9), an example of the coffee trade with Rio in the days before the blockade. Brown Bros & Company of New York, had issued in November, 1860, a letter of credit drawn on Brown, Shipley & Company, their alter ego in Great Britain, to the extent of £20,000 in the name of Maxwell, Wright & Company of Rio de Janeiro. The latter firm was to act as agent for the purchase of coffee, with instructions to ship it either to Brown Bros. or their business connections in New York, Boston, Philadelphia, Mobile, Baltimore, New Orleans, Charleston, or Savannah. Maxwell, Wright & Company were to receive a commission of 1 per cent unless the coffee was shipped to Charleston or Savannah, in which case the rate was to be $1\frac{1}{2}$ per cent, or to Mobile at $1\frac{1}{4}$ per cent.¹⁴³ It was while on a voyage carrying coffee under these terms that the *Lynchburg* (9) was captured off Cape Henry on May 30, 1861. The coffee trade is also highlighted in the ship's papers of other coffee ships. Letters on the barque *Empress* (50) list the exporters of coffee and the amount of their export in the month of September, 1861, and discuss the conditions of the local flour market.¹⁴⁴ Many of these letters reveal the interrelationships of these Anglo-American-Brazilian firms.¹⁴⁵

The microfilm of the New York prize court papers is intended to make it possible for historians interested in the various phases of the history of the Confederacy, of the blockade,

¹⁴³ See claim and answer of Brown Bros. & Co. filed June 25, 1861, in file of *Lynchburg* (9).

¹⁴⁴ Letters # 1-5 filed in folder of *Empress* (50).

¹⁴⁵ Phipps & Co. of Liverpool had a branch house in Rio under the name of Phipps Bros. & Co., and in New York one under the name of J. L. Phipps and Co. — see claim of J. L. Phipps & Co. in file of the *Winifred* (8); Richard Rostrom Co., of Manchester, were organized as Rostrom, Dutton & Co. in Rio and were represented in New York by Thomas Marshall Rooker, son of one of the firm residing in Manchester — see claim and answer of Rostrom, Dutton & Co. in file of *Forest King* (14).

of shipping and of business organization and relationships, conveniently to explore these raw materials of the period—crew lists, manifests, appraisals, registers, and logs, as well as the more subjective material found in depositions, court papers, and correspondence. Accordingly, all the material, of whatever nature, pertaining to each case has been brought together in the microfilm. As earlier stated, the cases have been arranged in the order in which they were recorded in the *Prize Commissioners' Register*. Prefixed to each case, to serve as a rough index to the stages through which it passed, is the reproduction of the appropriate pages of the *Prize Commissioners' Register* and of the *Admiralty Docket*. Next comes the prize master's deposition, which contains a list of all the papers found on the ship, both the ship's papers proper and other miscellaneous matter, including private letters; these consist both of correspondence belonging to members of the ship's company and of letters entrusted to their care for delivery on the other side of the blockade. These documents have been reproduced, normally in the order of their listing in the prize master's deposition, immediately following this virtual table of contents. Then follow the depositions *in preparatorio* and the court papers in the order of their filing; included with the latter are in some cases affidavits submitted by neutral claimants to substantiate their claims of ownership and in almost all cases itemized appraisals of vessel and cargo, as well as records of sales. Finally, the logs, where existent, have been added at the end of the record of each case.

It is hoped that this systematic arrangement, together with the abstract in tabular form, will provide a workable guide to the records. Any particular case, known by name, may of course be identified through the Index, in which the same system of chronological numeration for cross-reference has been employed.

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